

PART V

ADVISORY COUNCILS AND WAGE AND SALARY CONTROL

[Heading amended by section 37 of act 7 of 2005]

19 Advisory councils

The Minister may, either on his or her own initiative or on the recommendation of any employer or employee of any association representing employers or employees, appoint advisory councils consisting of such persons as the Minister may deem fit, to investigate and make recommendations to him or her as to one or more of the following—

- (a) in connection with wages, salaries or benefits—
 - (i) the fixing of minimum wages and benefits for employees; or
 - (ii) any other matters to which minimum wage notices may relate;
- (b) the making of regulations in terms of section 17 or section 26;
- (c) the compilation of a list of arbitrators in terms of section 98(6);
- (d) the declaration of any service as an essential service in terms of the definition of "essential service" contained in section 102;
- (e) the code of picketing in terms of section 104A;
- (f) any other matter as may give better effect to the provisions of this Act.

[Section as substituted by section 11 of Act 7 of 2005]

20 Minimum wage notices

- (1) The Minister may, by statutory instrument—
 - (a) in respect of any class of employees in any undertaking or industry—
 - (i) specify the minimum wage and benefits in respect of such class of employees;
 - (ii) require employers to grant or negotiate increments on annual income of such minimum amount or percentage as he may specify;
- and prohibit the payment of less than such specified minimum wage, benefits or increments to such class of employees;

(b) regulate or prohibit the making of deductions from the wages and benefits of an employee to whom such notice relates;

(c) regulate or prohibit the withdrawal, reduction or alteration of any benefits to which an employee to whom such notice relates was entitled in respect of his employment immediately before the date of commencement of such notice;

(d) give such other direction or make such other provision as he may deem necessary or desirable to ensure the payment of a minimum or other specified wage or benefits to any class of employees;

(e) provide for exemptions from paragraphs (a), (b), (c) and (d).

(2) Where the Minister has issued a minimum wage notice in terms of subsection (1)—

(a) every contract, agreement, determination or regulation made in terms of any enactment which related to the employment of an employee to whom such minimum wage notice relates and which provides for

wages, benefits or deductions from wages which are less favourable to the employee than those

specified in the notice, shall be construed with such modifications, qualifications, adaptations and

exceptions as may be necessary to bring it into conformity with such notice;

(b) every agreement or arrangement of any kind whatsoever, express or implied, whether made before or after the date of commencement of such minimum wage notice by an employer or employee to whom

such notice relates, which conflicts with such notice shall, to the extent of such conflict, be construed

with such modifications, qualifications, adaptations and exceptions as may be necessary to bring it into

conformity with such notice.

(3) Any person who contravenes a notice issued in terms of subsection (1) shall—

(a) commit an unfair labour practice for which redress may be sought in terms of Part XII; and (b) be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act 22 of 2001]

(4) The court convicting an employer of an offence in terms of paragraph (b) of subsection (3) may order him to pay—

(a) to the employee concerned; or (b) to any person specified by it for the benefit of the employee concerned; in addition to any other penalty which it may impose, an amount which, in its opinion, will adequately

compensate the employee concerned for any prejudice or loss he has suffered as a result of the contravention concerned, within such period and in such instalments as may be fixed by such court.

(5) Sections 348 and 349 of the Criminal Procedure and Evidence Act [Chapter 9:07] shall apply, *mutatis mutandis*, in relation to the amount specified in an order made in terms of subsection (4) as if such amount were a fine referred to in those sections.

(6) Nothing contained in this section shall be construed as precluding an employee, notwithstanding an order made in terms of subsection (4), from recovering by civil proceedings any amount or additional amount by which he has been prejudiced as a result of any contravention of a minimum wage notice.

21 Prohibition of termination of services of employee

(1) No employer shall, otherwise than in terms of an exemption granted to him in terms of subsection (2), terminate the services of an employee solely on the ground of a requirement to pay him a minimum wage in terms of a minimum wage notice.

(2) Where the Minister considers that special circumstances exist, he may, by notice in writing, and on such terms and conditions as he may specify, grant an employer exemption from subsection (1).

(3) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act 22 of 2001]

22

[Section repealed by section 12 of Act 7 of 2005]

PART VI

WORKERS COMMITTEES: FORMATION AND FUNCTIONS

23 Formation of workers committees

(1) Subject to this Act and any regulations, employees employed by any one employer may appoint or elect a workers committee to represent their interests:

Provided that no managerial employee shall be appointed or elected to a workers committee, nor shall a workers committee represent the interests of managerial employees, unless such workers committee is composed

solely of managerial employees appointed or elected to represent their interests.

(1a) Subject to subsection (1b), the composition and procedure of a workers committee shall be as determined by the employees at the workplace concerned.

[Subsection as inserted by section 14 of Act 17 of 2002]

(1b) Notwithstanding subsection (1a), if a trade union is registered to represent the interests of not less than fifty per centum of the employees at the workplace where a workers committee is to be established, every member of the workers committee shall be a member of the trade union concerned.

[Subsection as inserted by section 14 of Act 17 of 2002]

(2) For the purposes of appointing or electing a workers committee, employees shall be entitled to—

(a) be assisted by a labour officer or a representative of the appropriate trade union; and (b) reasonable facilities to communicate with each other and meet together during working hours at their place of work; and

(c) be provided by their employer with the names and relevant particulars of all employees employed by him;

so however, that the ordinary conduct of the employer's business is not unduly interfered with.

[Subsection as amended by section 13 of Act 7 of 2005]

(3) In the event of any dispute arising in relation to the exercise of any right referred to in subsection (2),

either party to the dispute may refer it to the labour officer mentioned in paragraph (a) of that subsection, or, in the absence of such labour officer, any other labour officer, and the determination of the labour officer on the dispute shall be final unless the parties agree to refer it to voluntary arbitration.

[Subsection as substituted by section 13 of Act 7 of 2005]

24 Functions of workers committees

(1) A workers committee shall—

(a) subject to this Act, represent the employees concerned in any matter affecting their rights and interests; and

(b) subject to subsection (3), be entitled to negotiate with the employer concerned a collective bargaining agreement relating to the terms and conditions of employment of the employees concerned; and

(c) subject to Part XIII, be entitled to recommend collective job action to the employees concerned; and (d) where a works council is or is to be constituted at any workplace, elect some of its members to represent employees on the works council.

(2) Subject to subsection (3), where a workers committee has been appointed or elected to represent

employees, no person other than such workers committee and the appropriate trade union, if any, may—

(a) act or purport to act for the employees in negotiating any collective bargaining agreement; or (b) direct or recommend collective job action to the employees.

(3) Where an appropriate trade union exists for any employees, a workers committee of those employees may

negotiate a collective bargaining agreement with an employer—

(a) in the case where the trade union has no collective bargaining agreement with the employer concerned, only to the extent that such negotiation is authorized in writing by the trade union concerned; or

(b) in the case where there is a collective bargaining agreement, only to the extent permitted by such collective bargaining agreement; or

(c) where the Minister certifies in writing that—

(i) the issue in question was omitted from or included in the principal collective bargaining

agreement when it should not have been so omitted or included; and

(ii) the parties to the principal collective bargaining agreement have failed or are not in a position to

reach an agreement on such an issue.

25 Effect of collective bargaining agreements negotiated by workers committees

(1) Every collective bargaining agreement which has been negotiated by a workers committee shall be

referred by the workers committee to the employees and the trade union concerned, and, if approved by the trade

union and by more than fifty per centum of the employees, shall become binding on the employer and the employees concerned:

Provided that where there is any conflict between the terms and conditions of any such collective bargaining agreement and collective bargaining agreement negotiated by an appropriate trade union, the latter shall prevail unless the terms and conditions of the former collective bargaining agreement are more favourable to the employees concerned, in which case such last-mentioned terms and conditions shall prevail.

(2) Where a collective bargaining agreement which has been negotiated by a workers committee contains any provision which is, or has become—

- (a) inconsistent with this Act or any other enactment; or
- (b)

[Paragraph repealed by section 14 of Act 7 of 2005]

(c) unreasonable or unfair, having regard to the respective rights of the parties; the Minister may direct the parties to the agreement to negotiate, within such period as he may specify, an amendment to the agreement in such manner or to such extent as he may specify, and he may give such other directions relating to the operation of the agreement pending its amendment as he may deem fit, and such directions shall be binding on the parties.

(3) Where the Minister has made a direction in terms of subsection (2), it shall be the duty of the parties to the collective bargaining agreement concerned to negotiate an amendment to the agreement in good faith, and to report back to the Minister within the period specified in the direction the extent to which they have been able or unable to agree in amending the agreement.

(4) The Minister may, after considering any report submitted to him in terms of subsection (3), amend the collective bargaining agreement concerned in accordance with the report of the parties or in such other manner as he may deem necessary in the national interest, having regard to the considerations specified in paragraphs (a), (b) and (c) of subsection (2), and the agreement, as amended, shall, subject to this Act, be binding on the

employer
and the employees concerned.

(5) A collective bargaining agreement negotiated in terms of this section shall not be affected by—

(a) where the employer is a corporate body, a change in membership of the management or ownership of the employer; or

(b) a change in membership of the workers committee or the employees concerned; or (c) a transfer of the undertaking or industry in which the employees concerned are employed.

(6) Any person who is aggrieved by any determination or direction in terms of subsection (2) or any amendment of a collective bargaining agreement in terms of subsection (4) may appeal to the Labour Court.

[Subsection inserted by section 14 of Act 7 of 2005]

25A Composition, procedure and functions of works councils

(1) In every establishment in which a workers committee representing employees other than managerial employees has been elected, there shall be a works council.

(2) A works council shall be composed of an equal number of members representing the employer and the workers committee.

(3) The procedure of a works council shall be as determined by the employer and the workers committee at the establishment concerned.

(4) Without prejudice to the provisions of any collective bargaining agreement that may be applicable to the establishment concerned, the functions of a works council shall be—

(a) to focus the best interests of the establishment and employees on the best possible use of its human, capital, equipment and other resources, so that maximum productivity and optimum employment

standards may be maintained; and

(b) to foster, encourage and maintain good relations between the employer and employees at all levels, and to understand and seek solutions to their common problems; and

(c) to promote the general and common interest, including the health, safety and welfare of both the establishment and its workers; and

(d) in general, to promote and maintain the effective participation of employees in the establishment, and to secure the mutual co-operation and trust of employees, the employer and any registered trade union

representing employees in the establishment, in the interests of industrial harmony.

(5) Without prejudice to the provisions of any collective bargaining agreement that may be applicable to the establishment concerned, a works council shall be entitled to be consulted by the employer about proposals relating to any of the following matters—

(a) the restructuring of the workplace caused by the introduction of new technology and work methods;
(b) product development plans, job grading and training and education schemes affecting employees;(

c) partial or total plant closures and mergers and transfers of ownership;

(d) the implementation of an employment code of conduct;(

e) the criteria for merit increases or payment of discretionary bonuses;(f) the retrenchment of employees, whether voluntary or compulsory:

Provided that any matter involving the retrenchment of five or more employees within a period of six months

shall be governed by sections twelve C and twelve D, unless otherwise agreed by the employer with the members

of the works council representing the workers committee.

(6) Before an employer may implement a proposal relating to any matter referred to in subsection (5), the employer shall—

(a) afford the members of the works council representing the workers committee a reasonable opportunity to make representations and to advance alternative proposals;

(b) consider and respond to the representations and alternative proposals, if any, made under paragraph (a) and, if the employer does not agree with them, state the reasons for disagreeing;

(c) generally, attempt to reach consensus with the members of the works council representing the workers committee on any matter referred to in subsection (5).

[Section as inserted by section 15 of Act 17 of 2002]

26 Minister may make regulations relating to workers committees

(1) The Minister may, after consultation with the appropriate advisory council, if any, appointed in terms of

section nineteen, make such regulations as he considers necessary for the control of workers committees and works councils and, without derogation from the generality of his power in this regard, such regulations may

provide for—

- (a) the methods or procedures to be followed for the formation of workers committees; (b) the tenure of office of members of workers committees;
- (c) the operation, management and conduct of the affairs of workers committees and works councils;

[Subsection as amended by section 45 of Act 17 of 2002]

(2) Regulations made in terms of subsection (1) may provide penalties for any contravention thereof:

Provided that no such penalty shall exceed the penalties referred to in section one hundred and twenty-eight.

PART VII

TRADE UNIONS, EMPLOYERS ORGANIZATIONS AND FEDERATIONS OF TRADE UNIONS AND EMPLOYERS ORGANIZATIONS

27 Right to form trade unions or employers organizations

- (1) Subject to this Act, any group of employees may form a trade union.
- (2) Subject to this Act, any group of employers may form an employers organization.
- (3) Subject to this Act, any group of trade unions or employers organizations may form a federation.

28 Requirements for formation of trade unions and employers organizations

- (1) Every trade union, employers organization or federation shall—
 - (a) subject to subsection (2), before it raises funds from any source; and (b) within six months of its formation; adopt a written constitution which shall provide for—
 - (i) the qualifications for membership, including membership fees, if any; and
 - (ii) the right of any person to membership if he is prepared to abide by the rules and conditions of membership; and
 - (iii) the number of officials and office bearers, their powers and functions and their appointment or election; and
 - (iv) the holding of annual general meetings; and
 - (v) the submission by any official or office bearer to re-appointment or re-election if a petition

therefor is made—

A. within one year of his appointment or election, as the case may be, by not less than three quarters; or

B. later than one year of his appointment or election, as the case may be, by not less than one quarter;

of the members of the trade union, employers organization or federation; and

(vi) the call and conduct of meetings of members or representatives of members of the trade union, employers organization or federation; and

(vii) the prohibition of discrimination against any members or class of members on grounds of race, tribe, place of origin, political opinion, colour, creed, gender, pregnancy, HIV/AIDS status or, subject to the Disabled Persons Act [Chapter 17:01], any disability referred to in the definition of "disabled person" in that Act; and

[Subparagraph as amended by section 45 of Act 17 of 2002]

(viii) the amendment of the constitution; and

(ix) the winding up of the trade union, employers organization, or federation;

and failure to so provide in the constitution shall constitute an unfair labour practice by the trade union, employers

organization, or federation concerned.

(2) A trade union, employers organization or federation may, notwithstanding subsection (1) and before it has adopted a written constitution in terms of that subsection, raise funds in respect of membership fees to an amount not exceeding such amount as may be specified by the Minister by statutory instrument for the purposes of this subsection.

(3) Every trade union, employers organization or federation shall, within six months of its formation, submit two copies of its constitution to the Minister, and shall within one month of any amendment of its constitution

submit copies of such amendment with a statement of the purpose thereof to the persons and authorities mentioned in this subsection.

(4) It shall be the duty of every official or office bearer of a trade union, employers organization or federation to ensure compliance with this section.

29 Registration of trade unions and employers organizations and privileges thereof

(1) Subject to this Act, any trade union, employers organization or federation may, if it so desires, apply for registration.

(2) Every trade union, employers organization or federation shall, upon registration, become a body corporate and shall in its corporate name be capable of suing and being sued, of purchasing or otherwise acquiring, holding or alienating property, movable or immovable, and of doing any other act or thing which its constitution requires or permits it to do, or which a body corporate may, by law, do.

(3)

[Subsection repealed by section 16 of Act 17 of 2002]

(4) Subject to this Act, a registered trade union or federation of such unions shall be entitled—

(a) to be assisted by a labour officer or designated agent of the appropriate employment council in its dealings with employers; and

[Paragraph as amended by section 15 of Act 7 of 2005]

(b) through its duly authorized representatives, to the right of access to employees conferred by subsection (2) of section seven; and

c) to be provided by employers with the names and other relevant particulars, including particulars as to wages of all employees who are employed in the industry or undertaking for which the trade union or

federation is registered, and who are members of the trade union or federation concerned; and

(d) to make representations to a determining authority or the Labour Court; and

(e)

[Paragraph repealed by section 15 of Act 7 of 2005]

(f) to form or be represented on any employment council; and
(g) to recommend collective job action; and

h) to levy, collect, sue for and recover union dues; and
(i) to act as an agent union in terms of section thirty-one; and

j) to exercise any other right or privilege conferred by this Act on registered trade unions or federations thereof.

(4a) In addition to the privileges specified in subsection (4), an official or office-bearer of a registered trade

union or federation shall be entitled to take such reasonable paid or unpaid leave during working hours as may be

agreed under a collective bargaining agreement for the purpose of enabling the official or office-bearer to perform

the functions of his office:

Provided that if the parties negotiating a collective bargaining agreement fail to agree on the extent of paid or

unpaid leave for the purposes of this subsection, either or both of the parties to the dispute may refer the matter to

a labour officer who shall thereupon deal with it in terms of section 93.

[Subsection as inserted by section 16 of Act 17 of 2002 and proviso substituted by section 15 of Act 7 of 2005]

(5) Subject to this Act, a registered employers organization shall be entitled—

(a) to be assisted by a labour officer or a designated agent of the appropriate employment council in its dealings with trade unions or workers committees; and

[Paragraph as amended by section 15 of Act 7 of 2005]

(b) through its duly authorized representatives, to be provided by trade unions and workers committees with the names and other relevant particulars of all their members; and

(c) to make representations to a determining authority or the Labour Court; and

(d)

[Paragraph repealed by section 15 of Act 7 of 2005]

(e) to form or be represented on any employment council; and

(f) to exercise any other right or privilege conferred by this Act on registered employers organizations.

30 Unregistered trade unions and employers organizations

(1) No unregistered trade union or employers organization may in its corporate name—

- (a) make representations to the Labour Court; or
- (b) be assisted by a labour officer or a designated agent of any employment council.

[Paragraph as amended by section 16 of Act 7 of 2005]

(2) No unregistered trade union or employers organization may, whether in its corporate name or through any of its members—

- (a)

[Paragraph repealed by section 16 of Act 7 of 2005]

- (b) form or be represented on any employment council; or (c) be entitled to be provided with the particulars specified in paragraph (c) of subsection (4) or paragraph (b) of subsection (5) of section twenty-nine.

(3) No unregistered trade union may, whether in its corporate name or otherwise—

- (a) recommend collective job action; or (b) have the right of access to employees conferred by subsection (2) of section seven; or
- (c) levy, collect or recover union dues by means of a check-off scheme.

[Paragraph as substituted by section 16 of Act 7 of 2005]

31 When trade union may act as agent union

(1) Subject to subsection (2), a registered trade union may act as the agent union of employees in any undertaking or industry who are not otherwise represented by a registered trade union if—

(a) not less than fifty per centum of the employees concerned are in favour of such trade union representing them; or

(b) an unregistered trade union or a registered trade union which otherwise represents the employees concerned requests the registered trade union to act as its agent union; or

(c) the Minister so requests.

(2) Except where the Minister has requested a registered trade union to act as an agent union or has

consented to such a request in terms of paragraph (c) of subsection (1), a registered trade union that desires so to act shall apply to the Minister in writing, setting out the circumstances giving rise to the application.

(3) On receipt of an application in terms of subsection (2), the Minister may, after taking into account—

(a) the extent to which the registered trade union appreciates the interests and needs of the employees concerned; and

(b) the views of any employers or employees who may be affected; and

(c) any levies or dues the registered trade union proposes to levy from the employees concerned; and

d) the ability of the registered trade union to act as an agent union;
grant or refuse the application.

(4) No registered trade union shall act as an agent union—

(a) for a period of more than three years unless, before the expiry of three years after commencing so to act, the Minister extends such period; or

(b) after a trade union representing the employees concerned has been registered or has re-acquired its competency to represent the employees concerned.

(5) A registered federation of trade unions may act, *mutatis mutandis*, as an agent union with respect to the members of one of its component unions or undertakings.

(6) The Minister may on his own initiative or on the application of any interested party, at any time, revoke the authority of a registered trade union or federation of trade unions to act as an agent union.

32 Agent union to disclose other agencies

A registered trade union or federation of trade unions which is acting as an agent union for any employees may, in terms of section thirty-one, become the agent union for any other employees if it discloses to such other employees its prior agency.

33 Application for registration

(1) Every application for registration by a trade union or employers organization or federation shall, subject

to section thirty-four, be made to the Registrar in the prescribed form.(2) The Registrar shall cause notice to be published in the Gazette of every application made in terms of this

section, and in such notice shall invite any person who wishes to make any representations relating to the

application to lodge such representations with the Registrar within such period, not being less than thirty days

from the date of the notice, as may be specified in the notice, and to state whether or not he wishes to appear in support of his representations at accreditation proceedings.

34 Requirements of application for registration

An application for registration of a trade union or employers organization or federation shall contain the following information—

- (a) the name of the trade union or employers organization or federation; and
- (b) the names and relevant particulars of the persons intending to secure the registration; and
- (c) the coverage of the proposed trade union or employers organization or federation with regard to the undertakings or industries concerned, with such exclusions as may be intended; and
- (d) the affiliates to and the affiliations of the trade union or employers organization or federation, including international, national or local unions, organizations or workers communities; and
- (e) sources of funds and material, both current and anticipated, for organizing the trade union or employers organization or federation, and the address of its bank;

and shall be accompanied by a copy of its constitution or operational rules.

35 Requirements of constitution of registered trade unions or employers organizations

The constitution of every registered trade union or employers organization or federation shall, in addition to the matters referred to in section twenty-eight, provide for—(a) consultation between the various governing bodies or branches of the trade union or employers organization and members thereof before such trade union or employers organization or federation—

- (i) enters upon a collective bargaining agreement; or
- (ii) recommends collective job action; or
- (iii) embarks upon any new programme which is likely to substantially affect the rights and interests of its members; or
- (iv) increases fees and other dues payable by its members; or
- (v) assigns an official to represent its members in a particular matter that is of considerable significance to its members;

and

(b) the keeping of books of accounts and the submission of such books of accounts for auditing within three months of the end of each financial year, and the making available to members of certified true copies of

the audited accounts and the auditor's report thereon; and

(c) the prohibition of the use of union or association dues of the trade union or employers organization or federation for electioneering for the trade union or employers organization or federation or for political

purposes; and

(d)

[Paragraph repealed by section 18 of Act 17 of 2002]

(e) the equitable sharing of the funds of the trade union or employers organization with any of its branches; and

(f) the maintenance of a register of members and a record of the fees, if any, paid by each member and the periods to which those fees relate; and

(g) the giving to any person who is refused membership or who is expelled of written reasons for such refusal or expulsion; and

(h) such other matters as may be prescribed.

[Section as amended by section 18 of Act 7 of 2005]

36 Registration of trade unions, employers organizations and federations

(1) Subject to this Act, the Registrar may, after considering any representations lodged in terms of subsection

(2) of section thirty-three and after the holding of accreditation proceedings, if any, grant or refuse an application

for the registration of a trade union or employers organization or federation.

(2) When granting any application for registration in terms of subsection (1), the Registrar may, after

consultation with the applicant, increase or reduce the interests or area in respect of which the applicant applied for registration.

(3) Where the Registrar grants an application for registration of a trade union or employers organization, he

shall enter in his register—

(a) the name of the trade union or employers organization; and (b) every undertaking or industry in respect of which the trade union or employers organization is registered; and

(c) such other particulars as may be prescribed;

and shall issue the trade union or employers organization with a certificate of registration in the prescribed form.

(4) The Registrar shall, on request, supply any interested person with his reasons for any decision made by him in terms of this section.

37

[Section repealed by section 19 of Act 17 of 2002]

38

[Section repealed by section 19 of Act 17 of 2002]

39 Application or proposal to vary, suspend or rescind registration

(1) Any interested person, including the trade union or employers organization concerned, may apply to the Registrar for the variation, suspension or rescission of the registration of a trade union or employers organization.

(2) If a registered trade union or employers organization—

(a) no longer adequately represents the interests or area for which it was registered; or (b) has failed to perform any of its functions in terms of this Act;

the Minister may, after consultation with the trade union or employers organization concerned, direct the Registrar

to hold accreditation proceedings to determine whether or not the registration of the trade union or employers organization concerned should be varied, suspended or rescinded.

(3) On receipt of an application in terms of subsection (1) or a direction in terms of subsection (2), the

Registrar shall publish notice in the Gazette of the application or direction and shall, in such notice, invite any person who wishes to make any representations relating to such application or direction to lodge with him such

representations within thirty days of the date of publication of the notice, and to state whether or not he wishes to

appear in support of such representations at accreditation proceedings.

40 Variation, suspension or rescission of registration

(1) Subject to this Act, the Registrar may, after considering any representations lodged in terms of subsection (3) of section thirty-nine and after the holding of accreditation proceedings, if any, vary, suspend or rescind the registration of a trade union or employers organization.

[Subsection as amended by section 17 of Act 7 of 2005]

(2) The rescission of the certification of a trade union or employers organization shall have the effect of rescinding the registration of that trade union or employers organization, unless the Registrar otherwise directs.

(3) The suspension of the registration of a trade union or employers organization shall have the effect of suspending that trade union or employers organization, as the case may be, from performing all or any of the functions of a registered trade union or employers organization, as may be specified in the order of suspension.

[Subsection as amended by section 17 of Act 7 of 2005]

(4) The Registrar shall, on request, supply any interested person with his reasons for any decision made in terms of this section.

(5) Any person who is aggrieved by any determination or decision made by the Registrar in terms of this section may appeal to the Labour Court.

[Subsection inserted by section 17 of Act 7 of 2005]

41 Accreditation proceedings

Accreditation proceedings shall be held for the purposes of determining whether or not—

- (a) a trade union or employers organization should be registered;
- (b)

[Paragraph repealed by section 20 of Act 7 of 2005]

(c) the registration of a trade union or employers organization should be varied, suspended or rescinded; in any case where—

- (i) the Registrar considers that such proceedings should be held; or
- (ii) the Minister directs that such proceedings should be held; or

(iii) any interested person has requested such proceedings, whether in relation to a trade union or employers organization which has already been registered or in relation to a trade union or employers organization which is proposed to be registered:

Provided that the Registrar may, in any case referred to in this subparagraph decline to hold accreditation proceedings.

[Paragraph as amended by section 20 of Act 7 of 2005]

42 Notice of accreditation proceedings

(1) Whenever accreditation proceedings are proposed to be held, the Registrar shall give not less than thirty days' notice thereof—

(a) in writing to the parties concerned; and (b) by publication of a notice in the Gazette and in such other publication as he thinks appropriate.

(2) A notice given in terms of subsection (1) shall specify—

(a) the subject of the accreditation proceedings; and (

b) the time and place of the accreditation proceedings;

and shall call upon all interested parties, who wish to do so, to submit any representations they wish to make to the Registrar and to advise him whether or not they will be attending the proceedings.

(3) Where the Registrar has received any representations relating to any matter to be considered at accreditation proceedings, he shall submit or make available a copy thereof to other interested parties as soon as practicable.

43 Procedure at accreditation proceedings

At the hearing of any accreditation proceedings—

(a) the parties—

(i) may appear in person or by any duly authorized representative;

(ii) shall be given a reasonable opportunity of presenting their case;

(b) the Registrar shall preside and shall, subject to any procedure that may be prescribed, act in such manner and on such principles as he deems best fitted to do substantial justice to the parties and to carry out the

objects of this Act.

44 Notification of decision made at accreditation proceedings

Upon the completion of any accreditation proceedings, the Registrar shall notify all interested party who appeared at the proceedings of his decision in writing and his reasons therefor.

45 Considerations relating to registration or variation, suspension or rescission of registration of trade unions or employers organizations

(1) In any determination of the registration of a trade union or employers organization or of the variation, suspension or rescission thereof, the Registrar shall—

(a) take into account—

(i) representations by—

A. employers and employees who might be affected; and

B. the Minister; and

C. any member of the public or any section thereof likely to be affected;

and

[Subparagraph as amended by section 18 of Act 7 of 2005]

(iii) the desirability of affording the majority of the employees and employers within an undertaking

or industry effective representation in negotiations affecting their rights and interests; and

(iv) the desirability of reducing, to the least possible number, the number of entities with which

employees and employers have to negotiate; and

(vi) whether representations made in terms of subsection (3) of section thirty-nine or at any accreditation proceedings in terms of section forty-one indicate that the trade union or employers organization will not be substantially representative of the employees or employers it proposes

to represent;

and

(b) ensure compliance with the following requirements—

(i) a trade union shall not represent employers;

(ii) an employers organization shall not represent employees other than managerial employees;

(iii) the constitution of a trade union or employers organization shall not be inconsistent with this

Act.

[Subsection as amended by section 21 of Act 17 of 2002]

(2) Where any person asserts that there should, in any particular case, be any departure from the general rule

referred to in subparagraph (iv) of paragraph (a) of subsection (1), the burden of proving such assertion shall lie on such person.

[Subsection as amended by section 21 of Act 17 of 2002]

46 Matters to be determined by Labour Court

In the event of any dispute as to—

(a) the extent or description of any undertaking or industry; or (b) whether any employees are managerial employees;

the matter shall be referred to the Labour Court for determination.

47 Right of appeal

Any person who is aggrieved by a decision of the Registrar—

(a) to register a trade union or employers organization; or

(b) not to register a trade union or employers organization; or

(c) to vary, suspend or rescind the registration of a trade union or employers organization or to decline such variation, suspension or rescission; or

(d)

[Paragraph repealed by section 21 of Act 17 of 2002]

(e) to decline to hold accreditation proceedings;

may, subject to this Part, appeal to the Labour Court.

[Section as amended by section 22 of Act 17 of 2002]

48 Notice of appeal

(1) A person who intends to appeal in terms of section forty-seven shall, within thirty days of the date on which he was notified of the decision against which he intends to appeal, in such form and manner as may be prescribed, give notice of appeal and of the grounds on which the appeal is based to the Registrar, and to every person who appeared at the accreditation proceedings, if any, concerned.

(2) A notice of appeal in terms of subsection (1) shall not suspend the operation or effect of the decision appealed against.

[Subsection as substituted by section 19 of Act 7 of 2005]

(3) The Registrar may, on the application of any person, by notice in writing impose such reasonable restrictions as he considers necessary on the activity of any trade union or employers organization concerned in an appeal referred to in subsection (1) in order to protect the reasonable interests of the public and of persons concerned in the appeal.

(4) Any person upon whom restrictions have been imposed in terms of subsection (3) may, with due notice to the other persons concerned, make representations to the Registrar in respect thereof and the Registrar may, if he thinks fit, vary or revoke such restrictions.

(5) Any person upon whom restrictions have been imposed in terms of subsection (3) shall, if he fails to comply therewith, be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act 22 of 2001]

49 Appeals before Labour Court

(1) On an appeal before the Labour Court in terms of section forty-seven—(a) the parties thereto shall be given a reasonable opportunity of presenting their case:

Provided that the Labour Court may direct in any particular case that the parties shall be confined

to submitting their representations in writing and, in such case, each party shall be given a reasonable

opportunity of replying to the representations of the other party;

(b) the Labour Court shall, subject to such procedures as may be prescribed, act in such manner and on such principles as he deems best fitted to do substantial justice to the parties, and to carry out the objects of

this Act.

(2) On an appeal in terms of section forty-seven, the Labour Court may, subject to this Part, confirm, vary or set aside the decision of the Registrar appealed against, and may make such other order, whether as to costs or otherwise, as he thinks necessary or appropriate.

50 Right of membership of registered trade unions and employers organizations

(1) Every employee shall be entitled to membership of any registered trade union which represents his undertaking or industry if he is prepared to comply with its rules and conditions of membership.

(2) Every employer shall be entitled to membership of any registered employers organization which represents his undertaking or industry if he is prepared to comply with its rules and conditions of membership.

51 Supervision of election of officers

(1) The Minister may, where the national interest so demands, cause to be supervised the holding of elections to any office or post in a registered trade union or employers organization.

(2) Without derogation from the generality of subsection (1) the Minister may, on the advice of the

Registrar—

(a) set aside any election if the election was not properly conducted or if the result of the election did not represent the views of the electors;

(b) postpone, or change the venue of or procedure for, any election, if it is necessary to do so to ensure that the views of electors are given proper expression;

(c) assign responsibility for the conduct of any election to any trade union or employers organization;(d) if the conduct of any election campaign by any person is leading to a misrepresentation of any issues involved in such election, and the consequences of such misrepresentation have serious implications for

the national interest, prohibit any person from so conducting the election campaign;

(e) make regulations for controlling and regulating elections and for fixing the qualifications for officers of registered trade unions and employers organizations.

(3) Any person who is aggrieved by any action taken by the Minister in terms of this section may appeal to

the Labour Court.

[Subsection inserted by section 20 of Act 7 of 2005]

52 Right to union or association dues

(1) For the purpose of fulfilling its obligation to represent the interests of its members employed or engaged in the undertaking or industry for which it is registered, a registered trade union or employers organization may, subject to this Act, levy, collect, sue for and recover union and association dues.

(2) Subject to this Act, a federation of trade unions or employers organizations shall not, unless permitted to do so in any particular case by the constitution of the member trade union or employers organization concerned, levy, collect or receive membership fees, union dues or association dues, as the case may be, from persons in their capacity as individual employers or employees.

(3) Any person who contravenes subsection (2) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act 22 of 2001]

53 Restrictions on payment of union dues by employers

(1) No employer shall, without the consent of the Minister, pay on behalf of any employee any union dues other than to a registered trade union.

(2) Any employer who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act 22 of 2001]

54 Collection of union dues

(1) Union dues shall be collected by an employer from his employees and transferred to the trade union

concerned—

(a) by means of a check-off scheme or in any other manner agreed between the trade union and the employees and the employer or employers organization concerned; or

(b) failing such agreement as referred to in paragraph (a), by authorisation in writing of an employee who is a member of the trade union concerned.

[Subsection as amended by section 23 of Act 17 of 2002]

(2) The Minister may, by notice in writing to any employer, prohibit or modify any arrangements made for the collection of union dues by the employer from his employees.

(3) The Minister may in terms of subsection (2) give directions—

(a) relating to a reduction or increase of the amount deductible by the employer;(b) directing payment of the union dues by the employer into a trust fund and not to the trade union concerned;

(c) in respect of such other matters in connection with the payment of union dues as the Minister considers necessary or desirable in the interest of the employees concerned.

(4) Any person who is aggrieved by any direction given by the Minister in terms of subsection (3) may appeal to the Labour Court.

(5) On an appeal in terms of subsection (4) the Labour Court may confirm, rescind or amend the Minister's direction:

Provided that where the Minister certifies that the reason for the direction was that the registered trade union concerned had engaged or had threatened to engage in an unlawful collective job action, any ruling by the Labour

Court rescinding or amending the Minister's direction shall not have effect for six months from the date of such direction.

[Proviso as amended by section 23 of Act 17 of 2002]

(5a) No employer shall collect or pay any union dues in terms of this section to or on behalf of a trade union or federation—

- (a) while its registration is suspended; or
- (b) after its registration has been rescinded.

[Subsection as inserted by section 23 of Act 17 of 2002]

(6) Any employer who fails or refuses to collect union dues and transfer them to the trade union concerned in accordance with this section shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act 22 of 2001]

55 Minister may regulate union dues

(1) The Minister may make regulations providing for the proper and systematic collection, management, application and disbursement of union dues by trade unions.

(2) Regulations made in terms of subsection (1) may provide for—

(a) the maximum amount, and method of assessment, of union dues;(b) the accounting procedures that shall be followed in connection with the collection, management, application and disbursement of union dues;

(c) the appointment of auditors and the keeping of books of accounts;(

d) the payment by trade unions of a percentage of union dues to any association or congress of trade unions recognized by the Minister as being representative of all or most registered trade unions in Zimbabwe;

(e) limitations on the salaries and allowances that may be paid to employees of trade unions;(f) limitations on the staff that may be employed, and the equipment and property that may be purchased, by trade unions;

(g) limitations on the matters on which and the extent to which union dues may be expended.

(3) The Minister may, in writing, direct any trade union to supply him with such information as he may require in connection with the acquisition and disbursement of union dues.

(3a) Any trade union that fails or refuses to comply with a direction in terms of subsection (3) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection as inserted by section 4 of Act 22 of 2001]

(4) The Minister may exercise the same powers as are conferred upon him in terms of subsections (1), (2) and (3), mutatis mutandis, in relation to association dues.

PART VIII

EMPLOYMENT COUNCILS

56 Voluntary employment councils

Any—

(a) employer, registered employers organization or federation of such organizations; and (b) registered trade union or federation of such trade unions; may, at any time, form an employment council by signing a constitution agreed to by them for the governance of the council, and by applying for its registration in terms of section fifty-nine.

57 Statutory employment councils

(1) The Minister may, whenever the national interest so demands, request—

(a) any registered employers organization or federation of such organizations; and (b) any registered trade union or federation of such trade unions; to form an employment council and to apply for its registration in terms of section fifty-nine.

(2) If within three months of a direction being given in terms of subsection (1), the parties concerned have failed to apply for the registration of an employment council, the Minister may appoint such number of persons as

he considers will represent the employers and employees concerned, and such persons shall, within such period as

may be specified by the Minister, form an employment council by signing a constitution agreed to by them for the

governance of the council and by obtaining registration of the council in terms of section fifty-nine.

58 Constitution of employment councils

The constitution of every employment council formed in terms of this Part shall provide for—

(a) a statement of the aims and objectives of the council; and (b) the registered trade union concerned or federation of such trade unions to appoint fifty per centum of the members of the employment council, and the employers organization concerned or federation of such

organizations to appoint the remaining members; and

(c) the appointment of a chairman and vice-chairman of the employment council:

Provided that every constitution shall provide that if the chairman is appointed by members

representing the registered trade union or federation of trade unions, the vice-chairman shall be

appointed by members representing the employers organization or federation of such organizations, and

vice-versa; and

(d) the dues which are payable to the employment council by the members thereof; and(

e) the administration of the funds of the employment council; and

(f) the keeping of minutes and other records of the proceedings of the employment council; and(

g) the admission of new parties to the employment council; and(h) the procedures for dealing with any disputes within the undertaking or industry represented by the parties to the employment council; and

(i) the amendment of the constitution; and

(j) the winding up of the employment council; and

(k) such other matters as may be prescribed.

59 Registration of employment councils

(1) Upon application for the registration of an employment council, the Registrar shall—

(a) if he is satisfied, having due regard to section sixty-one which shall apply, mutatis mutandis, that the employment council and its constitution comply with this Act, register the employment council;

(b) if he is not satisfied as provided in paragraph (a), refuse to register the employment council.

(2) Whenever the Registrar registers an employment council he shall furnish that employment council with a certificate of registration.

60 Employment councils to be bodies corporate

Every employment council shall, upon registration in terms of this Act, become a body corporate and in its corporate name be capable of suing and being sued, of purchasing or otherwise acquiring, holding or alienating property, movable or immovable, and of doing any other act which its constitution requires or permits it to do, or which a body corporate may by law do.

61 Variation of registration of employment councils

(1) Whenever the Registrar is satisfied that—

(a) any employment council is not sufficiently representative of the undertaking or industry in respect of which it is registered; or

(b) any branch or section of the undertaking or industry in respect of which an employment council is registered has been included in the registration by oversight or mistake or that an employment council is not sufficiently representative of any such branch or section; or

(c) the character of any undertaking or industry in respect of which an employment council is registered is such that a particular branch or section thereof should no longer be included in such undertaking or industry; or

(d) it is in the interests of employers, employees or the public for a particular branch or section of any undertaking or industry in respect of which an employment council is registered, to form a separate employment council for that branch or section; or

(e) any branch or section of an undertaking or industry should be included within the undertaking or industry for which an employment council is registered;

he may, after consultation with the employment council, vary the coverage in respect of which the employment council is registered and make the necessary variation in his register.

(2) If at any time the Registrar is satisfied that an employment council—

(a) is not sufficiently representative of any undertaking or industry in respect of which it is registered; or (b) has failed to comply with this Act;

he may, after consultation with the employment council concerned, cancel the registration of that employment council.

(3) If the Registrar exercises any of the powers conferred upon him by subsection (1) or (2), he shall call

upon the secretary of the employment council concerned to transmit to him the certificate of registration issued to

it, and the secretary shall, within thirty days of being so called upon, transmit the certificate of registration to the Registrar.

(3a) A secretary of an employment council who fails or refuses to transmit the council's certificate of registration to the Registrar in accordance with subsection (3) shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Subsection as inserted by section 4 of Act 22 of 2001]

(4) The Registrar shall, upon receipt by him of a certificate of registration of an employment council in terms of subsection (3)—

(a) make the necessary alterations therein and return it to the employment council concerned; or
(b) issue to the employment council concerned a fresh certificate of registration; or

c) cancel the certificate of registration;
as may be appropriate.

(5) Any person aggrieved by any action taken by the Registrar in terms of this section may appeal to the Labour Court.

62 Duties of employment councils

(1) An employment council shall, within the undertaking or industry and in the area in respect of which it is registered—

(a) assist its members in the conclusion of collective bargaining agreements or otherwise prevent disputes from arising, or settle disputes that have arisen or may arise between employers or employers

organizations on the one hand and employees, workers committees or trade unions on the other, and

shall take such steps as it may consider expedient to bring about the regulation or settlement of matters

of mutual interest to such persons or bodies;

[Proviso to paragraph repealed by section 37 of Act 7 of 2005]

(b) take such steps as it may consider expedient to ensure that any collective bargaining agreement and any regulations pertaining to an undertaking or industry with which it is concerned are being observed.

(2) The parties to an employment council registered in respect of any activity carried on by a local authority

or statutory body shall have power to enter into an agreement such as is referred to in subsection (1), notwithstanding anything to the contrary contained in any law empowering the local authority or statutory body concerned to make provision with respect to any such agreement.

63 Designated agents of employment councils

(1) For the purpose of enabling it to exercise its powers and perform its functions in terms of this Act, an employment council may, and when so directed by the Registrar shall, advise the Registrar of persons whom it wishes to be appointed as its designated agents.

(2) If the Registrar approves of the persons advised in terms of subsection (1) he shall appoint them as designated agents of the employment council and shall issue them with certificates of appointment.

(3) A designated agent of an employment council may—

(a) require any employer in the undertaking or industry and within the area for which the employment council is registered—

(i) to grant him reasonable access to his employees for the purpose of advising and assisting them in relation to their rights of employment;

(ii) to grant him reasonable access to his premises and to the books, records and other documents relating to his employment for the purpose of examining and ascertaining matters relating to or affecting the employment of his employees who are represented by any trade union or federation of trade unions which is a member of the employment council concerned, and of ascertaining whether or not the terms of any relevant collective bargaining agreement and regulations are being observed;

(b) enter upon any premises of an employer in the undertaking or industry and within the area for which the employment council is registered for the purpose of conducting any search therein where there are reasonable grounds for believing that such entry or search is necessary for the prevention, investigation or detection of an offence in terms of this Act or for the seizure of any property which is the subject

matter of an offence in terms of this Act.

(3a) A designated agent of an employment council who meets such qualifications as may be prescribed shall, in his or her certification of appointment, be authorised by the Registrar to redress or attempt to redress any dispute which is referred to the designated agent or has come to his or her attention; where such dispute occurs in

the undertaking or industry and within the area for which the employment council is registered, and the provisions

of Part XII shall apply, with the necessary changes, to the designated agent as they apply to a labour officer.

[Subsection as substituted by section 21 of Act 7 of 2005]

(3b) Where a designated agent is authorised to redress any dispute or unfair labour practice in terms of subsection (3a), no labour officer shall have jurisdiction in the matter.

[Subsection as inserted by section 24 of Act 17 of 2002]

(4) Any person who hinders or obstructs a designated agent of an employment council in the exercise of his powers or the performance of his duties in terms of this Act shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act 22 of 2001]

(5) Notwithstanding subsection (4), nothing done to prevent any disruption of normal production processes or any interference with the efficient running of an undertaking or industry shall be held to be in contravention of subsection (3).

PART IX

[Part IX (sections 64 to 73) repealed by s. 25 of Act 17 of 2002]

PART X

COLLECTIVE BARGAINING AGREEMENTS NEGOTIATED BY TRADE UNIONS AND EMPLOYERS ORGANIZATIONS

74 Scope of collective bargaining agreements

(1) This Part shall apply to collective bargaining agreements negotiated by registered trade unions, employers and employers organizations or federations thereof:

Provided that nothing in this Part contained shall prevent an unregistered trade union or employers organization from negotiating a collective bargaining agreement.

(2) Subject to this Act and the competence and authority of the parties, trade unions and employers or employers organizations may negotiate collective bargaining agreements as to any conditions of employment which are of mutual interest to the parties thereto.

(3) Without derogation from the generality of subsection (2), a collective bargaining agreement may make provision for—

(a) rates of remuneration and minimum wages for different grades and types of occupations;

(b) benefits for employees;(

c) deductions which an employer may make from employees' wages, including deductions for membership fees and union dues, and deductions which an employer may be required or permitted by law or by order

of any competent court to make;

(d) methods of calculating, or factors for adjusting rates of pay, and the dates, times and modes of payment;(e) all issues pertaining to overtime, piece-work, periods of vacation and vacation pay and constraints thereon;

(f) the demarcation of the appropriate categories and classes of employment and their respective functions;(

g) the conditions of employment for apprentices;

(h) the number of hours of work and the times of work with respect to all or some of the employees;(

i) the requirements of occupational safety; (j) the maintenance of, and access by the parties to, records of employment and pay;

(k) procedures for dealing with disputes within an undertaking or industry;

[Paragraph as inserted by section 26 of Act 17 of 2002]

(l) housing and transport facilities or in their absence, an allowance for the same;

[Paragraph inserted by section 22 of Act 7 of 2005]

(m) measures to combat workplace violence and handling its aftermath.

[Paragraph inserted by section 22 of Act 7 of 2005]

(4) Nothing contained in any collective bargaining agreement shall prevent either or both of the parties from seeking to renegotiate or amend the agreement after twelve months of its operation in order to take account of changed circumstances in the industry or undertaking concerned.

(5) A collective bargaining agreement shall not contain any provision which is inconsistent with this Act or any other enactment, and any collective bargaining agreement which contains any such provision shall, to the extent of such inconsistency, be construed with such modifications, qualifications, adaptations and exceptions as may be necessary to bring it into conformity with this Act or such other enactment.

(6) The existence of a collective bargaining agreement shall not preclude an employer and his employees from agreeing to the introduction of higher rates of pay or other more favourable conditions of employment before

the expiry of such collective bargaining agreement, so however that the rights and interests of the employees are

not thereby diminished or adversely affected:

Provided that the collective bargaining agreement shall be endorsed to reflect such higher rates of pay or other more favourable conditions of employment.

75 Obligation to negotiate in good faith

(1) All parties to the negotiation of a collective bargaining agreement shall—

(a) disclose all information relevant to the negotiation, including information contained in records, papers, books and other documents; and

(b) make no false or fraudulent misrepresentations in regard to matters relevant to the negotiation; and (c) earnestly and expeditiously endeavour to arrive at a successful conclusion in the negotiation; so as to ensure that the entire negotiation is conducted in absolute good faith.

(2) It shall constitute an unfair labour practice to fail to negotiate in absolute good faith, or in any way to bring about a situation that undermines the basis of negotiating in absolute good faith.

76 Duty of full disclosure when financial incapacity alleged

(1) When any party to the negotiation of a collective bargaining agreement alleges financial incapacity as a ground for his inability to agree to any terms or conditions, or to any alteration of any terms or conditions thereof,

it shall be the duty of such party to make full disclosure of his financial position, duly supported by all relevant accounting papers and documents, to the other party.

(2) Where there is any dispute as to whether or not full disclosure has been made in terms of subsection (1), either party to the dispute may refer it to a labour officer, and the determination of the labour officer on the dispute shall be final unless the parties agree to refer it to voluntary arbitration.

[Subsection as substituted by section 23 of Act 7 of 2005]

(3) Any person who fails or refuses to comply with a determination that is binding upon him in terms of subsection (2) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection as inserted by section 4 of Act 22 of 2001]

77 Representation of parties

The parties to the negotiation of a collective bargaining agreement may be represented by committees, delegates or agents:

Provided that—

(i) the powers of such committees, delegates or agents shall be specified in writing and certified by the parties they represent;

(ii) copies of such documents shall be served by each party on the other party or parties prior to the commencement of negotiations.

78 Ratification of collective bargaining agreements

(1) Every collective bargaining agreement which has been negotiated by a party and which is required to be

ratified by the members thereof or by a constituent branch or other party thereto shall be deemed not to have been

ratified unless every portion of the collective bargaining agreement has been ratified.

(2) Notwithstanding subsection (1), where the national interest so demands, the Minister may direct that any portion of a collective bargaining agreement which has not been ratified shall be put into effect prior to the ratification of the other portions of the collective bargaining agreement:

Provided that where a collective bargaining agreement itself stipulates that it shall not be valid unless ratified in toto, the Minister shall not exercise his powers in terms of this subsection except in relation to provisions dealing with wages and benefits which have been ratified.

79 Submission of collective bargaining agreements for approval or registration

(1) After negotiation, a collective bargaining agreement shall be submitted to the Registrar for registration.

(2) Where any provision of a collective bargaining agreement appears to the Minister to be—

(a) inconsistent with this Act or any other enactment; or

(b)

[Paragraph repealed by section 24 of Act 7 of 2005]

(c) unreasonable or unfair, having regard to the respective rights of the parties;

he may direct the Registrar not to register such collective bargaining agreement until it has been suitably amended

by the parties thereto.

(3) Where a collective bargaining agreement is not registered or approved in terms of subsection (2) until it

has been amended, it shall be the duty of the parties concerned to negotiate for such amendment in absolute good

faith and to duly participate in proceedings necessary therefor, and failure to do so shall constitute an unfair labour

practice.

80 Publication of collective bargaining agreements

(1) Upon registration of a collective bargaining agreement the Minister shall publish the agreement as a

statutory instrument.

(2) The terms and conditions of a registered collective bargaining agreement shall become effective and binding—

- (a) from the date of publication of the agreement in terms of subsection (1); or
- (b) from such other date as may be specified in the agreement.

81 Amendment of registered collective bargaining agreements by Minister

(1) Where a collective bargaining agreement which has been registered contains any provision which is or has become—

- (a) inconsistent with this Act or any other enactment; or
- (b)

[Paragraph repealed by section 25 of Act 7 of 2005]

(c) unreasonable or unfair, having regard to the respective rights of the parties; the Minister may direct the parties to the agreement to negotiate within such period as he may specify for the amendment of the agreement in such manner or to such extent as he may specify.

(2) Where the Minister has made a direction in terms of subsection (1), it shall be the duty of the parties to the collective bargaining agreement concerned to negotiate in absolute good faith for the amendment of the agreement and to report back to the Minister within the period specified in the direction as to the extent to which they have been able or unable to agree in amending the agreement.

(3) Upon receipt of the report of the parties in terms of subsection (2), the Minister shall consider the same and may thereafter amend the collective bargaining agreement in accordance with the report of the parties or in such other manner as is consistent with the considerations specified in paragraphs (a), (b) and (c) of subsection (1).

(4) Where the Minister amends a collective bargaining agreement in terms of subsection (3), he shall direct the Registrar to register such amendment and section eighty shall apply, mutatis mutandis, in relation thereto.

(5) Any person who is aggrieved by any action taken by the Minister in terms of this section may appeal to the Labour Court.

[Subsection as inserted by section 25 of Act 7 of 2005]

82 Binding nature of registered collective bargaining agreements

(1) Where a collective bargaining agreement has been registered it shall—

(a) with effect from the date of its publication in terms of section eighty-five, or such other date as may be specified in the agreement, be binding on the parties to the agreement, including all the members of such

parties, and all employers, contractors and their respective employees in the undertaking or industry to

which the agreement relates;

(b) remain binding despite—

(i) a change of employer; or

(ii) a change of ownership of the undertaking or industry concerned; or

(iii) a change in the membership or structure of the trade union or employers organization;

(c) remain binding until—

(i) it is replaced by a substitute agreement, notwithstanding any provision therein contained that it

shall expire by lapse of time;

(ii) it is terminated by the mutual agreement of the parties thereto.

[Subsection as amended by section 45 of Act 17 of 2002]

(2) This section shall apply, mutatis mutandis, in respect of any part of a collective bargaining agreement.

(3) Any person who fails to comply with a collective bargaining agreement which is binding upon him shall,

without derogation from any other remedies that may be available against him for its enforcement—

(a) commit an unfair labour practice for which redress may be sought in terms of Part XII; and (b) be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act 22 of 2001]

(4) If a registered collective bargaining agreement provides a procedure for the conciliation and arbitration of

any category of dispute, that procedure is the exclusive procedure for the determination of disputes within that

category.

[Subsection as inserted by section 27 of Act 17 of 2002]

82A Copies of collective bargaining agreement

(1) Each party to the negotiation of a collective bargaining agreement shall be provided with a copy of the agreement.

(2) A copy of a collective bargaining agreement in force shall be posted in a conspicuous place in every undertaking in respect of which it applies.

(3) A copy of a collective bargaining agreement in force shall be made available for examination free of charge on request by any employee bound by its terms at the offices of the trade union that was a party to its negotiation.

[Subsection as inserted by section 28 of Act 17 of 2002]

82B Codes of best practice, guidelines and model agreements

The Minister shall publish in the Government Gazette codes of best practices, guidelines and model agreements which the employers and employees may have regard to when performing their duties but they are not

obliged to follow them.

[Section inserted by section 26 of Act 7 of 2005]

PART XI

LABOUR COURT

[Part (sections 83 – 92D) inserted by section 29 of Act 17 of 2002]

83 Administration of Part XI

In this Part “responsible Minister” means (except in section 89(1)(b), where reference to the responsible Minister is to the Minister as defined in section 2) the Minister responsible for justice or any other Minister to whom the President may, from time to time, assign the administration of this Part.

[Section as substituted by section 27 of Act 7 of 2005]

84 Establishment and composition of Labour Court

(1) There is hereby established a court, to be known as the Labour Court, which shall be a special court for the purposes of section 92 of the Constitution and a court of record.

(2) The Labour Court shall consist of—

(a) the Senior President of the Labour Court and such number of Presidents of the Labour Court as the President may consider necessary after consultation with the Judicial Service Commission; and

(b) subject to subsection (1) of section ninety, such assessors as are provided for in this Act.(3) A person referred to in paragraph (a) of subsection (1) shall be appointed on such terms and conditions, including terms and conditions relating to the payment of salary, allowances and pension benefits, as the President, on the recommendation of the Judicial Service Commission, may fix.

(4) Assessors shall be chosen in terms of section ninety, whenever required, from the list prepared in terms of section eight-six.

85 Qualification for appointment as President of Labour Court

A person shall not be qualified for appointment as a President of the Labour Court unless he—

(a) is a former judge of the Supreme Court or the High Court; or (b) is qualified to be judge of the High Court; or (c) has been a magistrate in Zimbabwe for not less than seven years.

86 Assessors

(1) The Senior President of the Labour Court, in consultation with the Minister and the responsible Minister shall prepare a list of the names of not less than ten persons who have knowledge or experience in labour relations and who may appropriately be appointed as assessors of the Labour Court.

[Subsection as substituted by section 28 of Act 7 of 2005]

(2) The Senior President of the Labour Court may, in consultation with the responsible Minister, add or remove the name of any person from any list drawn up in terms of subsection (1).

[Subsection as amended by section 28 of Act 7 of 2005]

(3) Before entering upon his duties for the first time, an assessor shall take an oath before the Senior President of the Labour Court that he will faithfully perform his duties as a member of the Labour Court.

(4) An assessor shall be paid such remuneration and allowances as the responsible Minister, with the consent of the Minister responsible for finance, may fix.

Subsection as amended by section 28 of Act 7 of 2005]

87 Registrar of Labour Court

(1) There shall be a registrar of the Labour Court whose office shall be a public office and form part of the Public Service.

(2) The registrar of the Labour Court shall be responsible for—

(a) filing applications, references, appeals, records and other documents lodged with the Labour Court; and
(b) safeguarding the records of the Labour Court; and(

c) notifying parties of the dates and times at which matters are set down for hearing by the Labour Court; and

(d) performing such other functions as may be prescribed or as may be necessary for the proper functioning of the Labour Court.

(3) In the performance of his functions as registrar of the Labour Court, the registrar of the Labour Court shall be subject to the directions of the Senior President of the Labour Court.

88 Seal of Labour Court

(1) The Labour Court shall have and use as occasion may require a seal in a design approved from time to time by the President.

(2) The registrar of the Labour court shall have custody of the seal of the Labour Court.

89 Functions, powers and jurisdiction of Labour Court

(1) The Labour Court shall exercise the following functions—

(a) hearing and determining applications and appeals in terms of this Act or any other enactment; and
(b) hearing and determining matters referred to it by the Minister in terms of this Act; and(

c) referring a dispute to a labour officer, designated agent or a person appointed by the Labour Court to conciliate the dispute if the Labour Court considers it expedient to do so;

(d) appointing an arbitrator from the panel of arbitrators referred to in subsection (6) of section ninety-eight

to hear and determine an application;

(d1) exercise the same powers of review as would be exercisable by the High Court in respect of labour matters;

[Subparagraph as inserted by section 29 of Act 7 of 2005]

(e) doing such other things as may be assigned to it in terms of this Act or any other enactment.

(2) In the exercise of its functions, the Labour Court may—

(a) in the case of an appeal—

(i) conduct a hearing into the matter or decide it on the record; or

(ii) confirm, vary, reverse or set aside the decision, order or action that is appealed against, or

substitute its own decision or order; or

(iii)

[Subparagraph repealed by section 29 of Act 7 of 2005]

(iv)

[Subparagraph repealed by section 29 of Act 7 of 2005]

(b) in the case of an application made in terms of subparagraph (i) of subsection (7) of section ninety-three, remit it to the same or a different labour officer with instructions directing that officer to attempt to

resolve it in accordance with such guidelines as it may specify;

(c) in the case of an application made in terms of subparagraph (ii) of subsection (7) of section ninety-three, make an order for any of the following or any other appropriate order—

(i) back pay from the time when the dispute or unfair labour practice arose;

(ii) in the case of an unfair labour practice involving a failure or delay to pay or grant anything due

to an employee, the payment by the employer concerned to the employee or someone acting on

his behalf of such amount, whether as a lump sum or by way of instalments, as will, in the

opinion of the Labour Court, adequately compensate the employee for any loss or prejudice

suffered as a result of the unfair labour practice;

(iii) reinstatement or employment in a job:

Provided that—

(i) any such determination shall specify an amount of damages to be awarded to the employee concerned as an alternative to his reinstatement or employment;

(ii) in deciding whether to award damages or reinstatement or employment, onus is on the employer to prove that the employment relationship is no longer tenable, taking into account the size of the employer, the preferences of the employee, the situation in the labour market and any other relevant factors;

(iii) should damages be awarded instead of reinstatement or employment as a result of an untenable working relationship arising from unlawful or wrongful dismissal by the employer, punitive damages may be imposed;

[Proviso as substituted by section 29 of Act 7 of 2005]

(iv) insertion into a seniority list at an appropriate point;

(v) promotion or, if no promotion post exists, pay at a higher rate pending promotion;

(vi) payment of legal fees and costs;

(vii) cessation of the unfair labour practice;

(d) in the case of an application other than one referred to in paragraph (b) or (c), or a reference, make such determination or order or exercise such powers as may be provided for in the appropriate provision of this Act;

(e) subject to subsections (3) and (4), make such order as to costs as the Labour Court thinks fit.

(3) The costs in connection with any proceedings before the Labour Court shall be payable in accordance

with the scale of costs for the time being in use in the court of a magistrate in civil cases, unless the person

presiding over the Labour Court directs that the scale of costs for the time being in use in the High Court shall apply.

(4) Any costs awarded by the Labour Court shall be taxed by the registrar of the Labour Court in terms of

subsection (3) and the taxation of such costs shall be subject to review by a President of the Labour Court at the instance of any interested party.

(5) For the purpose of taking evidence on any question before it, the Labour Court shall have the same powers as the High Court to summon witnesses, to cause the oath to be administered to them, to examine them and to call for the production of books, plans and documents.

(6) No court, other than the Labour Court, shall have jurisdiction in the first instance to hear and determine any application, appeal or matter referred to in subsection (1).

90 Exercise of functions by Labour Court

(1) The functions of the Labour Court may be exercised by one or more Presidents sitting by themselves or with one or more assessors chosen from the list prepared in terms of subsection (1) of section eighty-six.

(2) Subject to subsection (3), all questions that fall to be decided by the Labour Court sitting with more than one member shall be decided by a majority of the members:

Provided that—

(i) where the opinions of the members of the Labour Court are equally divided on any question, the decision of the person presiding over the Labour Court shall be the decision of the Labour Court;

(ii) no assessor shall have a voice in the decision of—

A. any question of law; or

B. any question as to whether a matter for decision is a question of fact or of law; or

C. any question as to the admissibility of evidence.

(3) Subject to this Part, the Presidents of the Labour Court may make rules for the Court providing for—

(a) the practice, procedure and rules of evidence to be followed, including the determination of any preliminary point in any proceedings;

(b) the service of notices and other documents required for the purpose of any proceedings;

(c) the forms to be used for the purpose of any proceedings;

d) the fees to be paid in respect of the service or examination of documents and the doing of any other thing by the registrar of the Labour Court or any officer of the Labour Court in connection with any

proceedings;

(e) the tariff of fees which may be charged by legal practitioners or a registered trade union or employersorganisation for the purpose of paragraph (b) of section ninety-two in respect of any matter relating to the Labour Court;

(f) allowances and other payments to witnesses summoned to give evidence or to produce any book or document in any proceedings;

(g) any other matter which the Presidents of the Labour Court consider should be provided for in rules in order to ensure or facilitate the proper dispatch and conduct of the business of the Labour Court:

Provided that in any case not covered by the rules referred to in this subsection, the Labour Court shall act in

such manner as it considers best fitted to do substantial justice and effect and carry out the objects of this Act, and

for that purpose the Labour Court may give instructions on the course to be pursued which shall be binding on the

parties to the proceedings.

(4) Rules in terms of subsection (3) shall not have effect until they have been approved by the Chief Justice and the responsible Minister.

[Subsection as amended by section 37 of Act 7 of 2005]

90A Procedure and evidence in the Labour Court

(1) The Labour Court shall not be bound by the strict rules of evidence, and the court may ascertain any relevant fact by any means which the presiding officer thinks fit and which is not unfair or unjust to either party.

(2) Evidence may be adduced orally or in writing in any proceedings in the Labour Court, at the discretion of the presiding officer.

(3) The parties or their representatives to any proceedings in the Labour Court shall be entitled to question or cross-examine each other or any witness.

(4) It shall be the responsibilities of the presiding officer to ascertain the facts in any proceedings in the

Labour Court, and for that purpose he or she may—

- (a) call any party or his or her representative;
- (b) question or cross-examine any party or his or her representative or witness; and
- (c) put any question to a party or his or her representative or witness which is suggested to him or her by any party.

[Section inserted by section 30 of Act 7 of 2005]

91 Sittings of Labour Court

The Labour Court shall sit at such places and at such times as may be prescribed or as the Senior President of the Labour Court may direct.

92 Representation of parties

A party to a matter before the Labour Court may appear in person or be represented and appear by—

- (a) a legal practitioner registered in terms of the Legal Practitioners Act [Chapter 27:07]; or
- (b) an official or employee of a registered trade union or employers organisation of which the party is a member.

92A Contempt of Labour Court

(1) If any person, at a sitting of the Labour Court, wilfully insults any member of the Court or wilfully interrupts the proceedings of the Court or otherwise wilfully disturbs the peace or order of the proceedings, the member presiding may order the person to be removed and detained in custody until the rising of the Court.

(2) Any person referred to in subsection (1) shall be guilty of an offence and liable, in addition to any removal and detention in terms of that subsection, to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection as amended by section 31 of Act 7 of 2005]

92B Effective date and enforcement of decisions of Labour Court

(1) The Labour Court may fix the date from which any decision, order or determination made by it shall operate, which date may be an earlier or later date than the date of the decision, order or determination.

(2) The President of the Labour Court who made the decision, order or determination shall submit sufficient certified copies of it to the registrar of the Labour Court to enable the registrar to furnish a copy to each of the parties affected by it.

(3) Any party to whom a decision, order or determination relates may submit for registration the copy of it furnished to him in terms of subsection (2) to the court of any magistrate which would have had jurisdiction to make the order had the matter been determined by it, or, if the decision, order or determination exceeds the jurisdiction of any magistrates court, the High Court.

(4) Where a decision, order or determination has been registered in terms of subsection (3) it shall have the effect, for purposes of enforcement, of a civil judgment of the appropriate court.

(5) If any order which has been registered in terms of subsection (4) has been rescinded or altered by the Labour Court in terms of section ninety-two C, the clerk or registrar of the court concerned shall make the appropriate adjustment in his register.

92C Rescission or alteration by Labour Court of its own decisions

(1) Subject to this section, the Labour Court may, on application, rescind or vary any determination or order— (a) which it made in the absence of the party against whom it was made; or (b) which the Labour Court is satisfied is void or was obtained by fraud or a mistake common to the parties;
or

(c) in order to correct any patent error.

(2) The Labour Court shall not exercise the powers conferred by subsection (1)—

(a) except upon notice to all the parties affected by the determination or order concerned; or (

b) in respect of any determination or order which is the subject of a pending appeal or review.

(3) Where an application has been made to the Labour Court to rescind or vary any determination or order in terms of subsection (1), the Labour Court may direct that—

(a) the determination or order shall be carried into execution; or (b) execution of the determination or order shall be suspended pending the decision upon the application;
upon such terms as the Labour Court may fix as to security for the due performance of the determination or order

or any variation thereof.

92D Appeals to the Labour Court not provided for elsewhere in this Act

A person who is aggrieved by a determination made under an employment code, may, within such time and in such manner as may be prescribed, appeal to the Labour Court.

[Section as substituted by section 32 of Act 7 of 2005]

92E Appeals to the Labour Court generally

(1) An appeal in terms of this Act may address the merits of the determination or decision appealed against.

(2) An appeal in terms of subsection (1) shall not have the effect of suspending the determination or decision appealed against.

(3) Pending the determination of an appeal the Labour Court may make such interim determination in the matter as the justice of the case requires.

[Section inserted by section 32 of Act 7 of 2005]

[Part XI (sections 83 – 92D) inserted by section 29 of Act 17 of 2002]

92F Appeals against decisions of Labour Court

(1) An appeal on a question of law only shall lie to the Supreme Court from any decision of the Labour Court.

(2) Any party wishing to appeal from any decision of the Labour Court on a question of law in terms of subsection (1) shall seek from the President who made the decision leave to appeal that decision.

(3) If the President refuses leave to appeal in terms of subsection (2), the party may seek leave from the judge of the Supreme Court to appeal.

[Section inserted by section 32 of Act 7 of 2005]

PART XII

RESOLUTION OF DISPUTES AND UNFAIR LABOUR PRACTICES

93 Powers of labour officers

(1) A labour officer to whom a dispute or unfair labour practice has been referred, or to whose attention it has come, shall attempt to settle it through conciliation or, if agreed by the parties, by reference to arbitration.

[Subsection as amended by section 33 of Act 7 of 2005]

(2) If the dispute or unfair labour practice is settled by conciliation, the labour officer shall record the settlement in writing.

[Subsection as amended by section 33 of Act 7 of 2005]

(3) If the dispute or unfair labour practice is not settled within thirty days after the labour officer began to attempt to settle it under subsection (1), the labour officer shall issue a certificate of no settlement to the parties to the dispute or unfair labour practice.

[Subsection as amended by section 33 of Act 7 of 2005]

(4) The parties to a dispute or unfair labour practice may agree to extend the period for conciliation of the dispute or unfair labour practice referred to in subsection (3).

[Subsection as amended by section 33 of Act 7 of 2005]

(5) After a labour officer has issued a certificate of no settlement, the labour officer, upon consulting any labour officer who is senior to him and to whom he is responsible in the area in which he attempted to settle the dispute or unfair labour practice —

(a) shall refer the dispute to compulsory arbitration if the dispute is a dispute of interest and the parties are engaged in an essential service; or

(b) may, with the agreement of the parties, refer the dispute or unfair labour practice to compulsory arbitration; or

(c) may refer the dispute or unfair labour practice to compulsory arbitration if the dispute or unfair labour practice is a dispute of right;

and the provisions of section ninety-eight shall apply to such reference to compulsory arbitration.

[Subsection as amended by section 33 of Act 7 of 2005]

(6)

[Subsection repealed by section 33 of Act 7 of 2005]

(7) If, in relation to any dispute or unfair labour practice —

(a) after a labour officer has issued a certificate of no settlement in relation to the dispute or unfair labour practice, it is not possible for any reason to refer the dispute or unfair labour practice to compulsory

arbitration as provided in subsection (5); or

(b) a labour officer refuses, for any reason, to issue a certificate of no settlement in relation to any dispute or unfair labour practice after the expiry of the period allowed for conciliation under subsection (3) or any

extension of that period under subsection (4);

any party to the dispute may, in the time and manner prescribed, apply to the Labour Court—

(i) for the dispute or unfair labour practice to be disposed of in accordance with paragraph (b) of subsection (2) of section eighty-nine, in the case of a dispute of interest; or(ii) for an order in terms of paragraph (

c) of subsection (2) of section eighty-nine, in the case of a dispute of right.

[Subsection as amended by section 33 of Act 7 of 2005]

[Section substituted by section 30 of Act 17 of 2002]

94 Prescription of disputes

(1) (1) Subject to subsection (2), no labour officer shall entertain any dispute or unfair labour practice

unless—

(a) it is referred to him; or(b) has otherwise come to his attention;
within two years from the date when the dispute or unfair labour practice first arose.

(2) Subsection (1) shall not apply to an unfair labour practice which is continuing at the time it is referred to
or comes to the attention of a labour officer.

(3) For the purpose of subsection (1), a dispute or unfair labour practice shall be deemed to have first arisen
on the date when—

(a) the acts or omissions forming the subject of the dispute or unfair labour practice first occurred; or
(b) the party wishing to refer the dispute or unfair labour practice to the labour officer first became aware of the acts or omissions referred to in paragraph (

a), if such party cannot reasonably be expected to have known of such acts or omissions at the date when they first occurred.

[Section as amended by section 31 of Act 17 of 2002]

95

[Section repealed by section 32 of Act 17 of 2002]

96

[Section repealed by section 32 of Act 17 of 2002]

97

[Section repealed by section 34 of Act 7 of 2005]

98 Effect of reference to compulsory arbitration under Parts XI and XII

(1) In this section, "reference to compulsory arbitration", in relation to a dispute, means a reference made in terms of paragraph (d) of subsection (1) of section eighty-nine or section ninety-three.

(2) Subject to this section, the Arbitration Act [Chapter 7:15] shall apply to a dispute referred to compulsory arbitration.

(3) Before referring a dispute to compulsory arbitration, the Labour Court or the labour officer, as the case may be, shall afford the parties a reasonable opportunity of making representations on the matter.

(4) In ordering a dispute to be referred to compulsory arbitration, the Labour Court or labour officer, as the case may be, shall determine the arbitrator's terms of reference after consultation with the parties to the dispute.

(5) In referring a dispute to compulsory arbitration—

(a) the Labour Court; or (b) the labour officer, after consulting any labour officer who is senior to him and to whom he is responsible in the area in which he attempted to conciliate the dispute;

as the case may be, shall appoint as an arbitrator a person whose name appears on a list referred to in subsection

(6):

Provided that the labour officer who attempted to conciliate the dispute which is referred to arbitration shall not be appointed as the arbitrator in that dispute.

(6) The Minister, in consultation with the Senior President of the Labour Court and the appropriate advisory council, if any, appointed in terms of section nineteen, shall from time to time prepare a list of arbitrators consisting of—

(a) any labour officer, ex officio or designated agent whom he considers to be experienced or qualified in arbitration; and

[Paragraph as amended by section 35 of Act 7 of 2005]

(b) any other person whom he considers to be experienced or qualified in arbitration.

(7) In referring a dispute to compulsory arbitration by a person other than a labour officer, or a designated

agent for the employment council which is registered to represent the undertaking or industry to which the parties

belong, the Labour Court or labour officer shall determine the share of the costs of the arbitration to be borne by each party.

[Subsection as substituted by section 35 of Act 7 of 2005]

(8) Where a party to a dispute referred to compulsory arbitration is made up of more than one employer, employee, employers organisation, or trade union, the costs of the arbitration shall be paid in the proportions agreed upon by the constituent members of the party or, failing agreement, in the proportions determined by the arbitrator or arbitrators.

(9) In hearing and determining any dispute an arbitrator shall have the same powers as the Labour Court.

[Subsection as substituted by section 35 of Act 7 of 2005]

(10) An appeal on a question of law shall lie to the Labour Court from any decision of an arbitrator appointed in terms of this section.

(11) Where the Labour Court or a labour officer has referred a dispute to compulsory arbitration, no

employee, workers committee, trade union, employer or employers organisation shall engage in collective job action in respect of the dispute.

(12) Any person who contravenes subsection (11) shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(13) At the conclusion of the arbitration the arbitrator shall submit sufficient certified copies of his arbitral award to each of the parties affected by it.

(14) Any party to whom an arbitral award relates may submit for registration the copy of it furnished to him in terms of subsection (13) to the court of any magistrate which would have had jurisdiction to make an order corresponding to the award had the matter been determined by it, or, if the arbitral award exceeds the jurisdiction of any magistrates court, the High Court.

(15) Where arbitral award has been registered in terms of subsection (14) it shall have the effect, for purposes of enforcement, of a civil judgment of the appropriate court.

[Section as substituted by section 34 of Act 17 of 2002]

99

[Section repealed by section 34 of Act 17 of 2002]

100

[Section repealed by section 34 of Act 17 of 2002]

101 Employment codes of conduct

(1) An employment council or, subject to subsections (1a), (1b) and (1c), a works council may apply in the manner prescribed to the Registrar to register an employment code of conduct that shall be binding in respect of the industry, undertaking or workplace to which it relates.

[Subsection as substituted by section 35 of Act 17 of 2002]

(1a) Where an employment council has registered a code governing employers and employees represented by it, no works council may apply for the registration of a code in respect of any industry, undertaking or workplace represented by the employment council unless it first refers the code to the employment council for its approval.

[Subsection as inserted by section 35 of Act 17 of 2002]

(1b) Where a code is registered by a works council in respect of any industry, undertaking or workplace represented by an employment council and the employment council subsequently registers its own code, the code registered by the employment council shall supersede that of the works council, unless the works council refers it to the employment council for approval.

[Subsection as inserted by section 35 of Act 17 of 2002]

(1c) Where an employment council refuses to approve a code made by a works council in terms of subsection (1a) or (1b), the works council may refer the matter to a labour officer, and the determination of the labour officer on the matter shall be final unless the parties agree to refer it to voluntary arbitration.

[Subsection as inserted by section 35 of Act 17 of 2002]

(2) On application being made in terms of subsection (1), the Registrar shall, if he is satisfied that the employment code concerned provides for the matters referred to in subsection (3), register the employment code in the manner prescribed.

(3) An employment code shall provide for—

- (a) the disciplinary rules to be observed in the undertaking, industry or workplace concerned, including the precise definition of those acts or omissions that constitute misconduct;
- (b) the procedures to be followed in the case of any breach of the employment code;
- (c) the penalties for any breach of the employment code, which may include oral or written warnings, fines, reductions in pay for a specified period, suspension with or without pay or on reduced pay, demotion and dismissal from employment;

(d) the person, committee or authority that shall be responsible for implementing and enforcing the rules, procedures and penalties of the employment code;

(e) the notification to any person who is alleged to have breached the employment code that proceedings are to be commenced against him in respect of the alleged breach;

(f) the right of a person referred to in paragraph (e) to be heard by the appropriate person, committee or authority referred to in paragraph (d) before any decision in his case is made; (

g) a written record or summary to be made of any proceedings or decisions taken in terms of the employment code, which record or summary shall be made at the time such proceedings and decisions are taken.

(4) An applicant referred to in subsection (2) may, at any time after the registration of an employment code, apply in the manner prescribed to the Registrar to register any amendment to the employment code, and subsection (3) shall apply, mutatis mutandis, in relation to that amendment.

(5) Notwithstanding this Part, but subject to subsection (6), no labour officer shall intervene in any dispute or matter which is or is liable to be the subject of proceedings under an employment code, nor shall he intervene in any such proceedings.

(6) If a matter is not determined within thirty days of the date of the notification referred to in paragraph (e) of subsection (3), the employee or employer concerned may refer such matter to a labour officer, who may then determine or otherwise dispose of the matter in accordance with section ninety-three.

(7)

[Subsection repealed by section 35 of Act 17 of 2002]

(8)

[Subsection repealed by section 35 of Act 17 of 2002]

(9) The Minister may, after consultation with representatives of trade unions and employers organizations, by statutory instrument publish a model employment code of conduct.

(10) An employment council or works council may, by making application in terms of subsection (1), adopt the model employment code referred to in subsection (9), subject to such modifications as may be appropriate to the industry, undertaking or workplace concerned.

[Section as amended by section 45 of Act 17 of 2002]

PART XIII

COLLECTIVE JOB ACTION

102 Interpretation in Part XIII

In this Part—

“appropriate authority”.....

[Definition repealed by section 36 of Act 17 of 2002]

“disposal order” means an order made in terms of section one hundred and seven;

“essential service” means any service—

(a) the interruption of which endangers immediately the life, personal safety or health of the whole or any part of the public; and

(b) that is declared by notice in the Gazette made by the Minister, after consultation with the appropriate advisory council, if any, appointed in terms of section nineteen, to be an essential service;

[Definition as amended by section 36 of Act 17 of 2002]

“lawful collective job action” means collective job action which is not prohibited in terms of subsection (3)

of section one hundred and four;

“lock-out” means any one or more of the following acts or omissions by any person who is or has been an employer—

(a) the exclusion by him of any person or number of persons, who are or have been in his employ, from any premises on which work provided by him is or has been performed; or

(b) the total or partial discontinuance by him of his business or of the provision of work; or(c) the breach or termination by him of the contracts of employment of any person or number of persons in his employ; or

(d) the refusal or failure by him to re-employ any person or number of persons who have been in his employ;

if that exclusion, discontinuance, breach, termination, refusal or failure is in consequence of a dispute

regarding conditions of employment or other matters, and the purpose of that exclusion, discontinuance,

breach, termination, refusal or failure is to induce or compel any persons who are or have been in his employ or in the employ of other persons to agree to or comply with any demands concerning conditions of employment or re-employment or other matters made by him or on his behalf or by or on behalf of any other person who is or has been an employer;

“show cause order” means an order made in terms of section one hundred and six;
“unlawful job action”.....

[Definition repealed by section 36 of Act 17 of 2002]

103 Appeal against declaration of essential service

Any person who is aggrieved by any statutory instrument by the Minister declaring any service or occupation to be an essential service may appeal against such notice to the Labour Court, and the Labour Court may vary or revoke the statutory instrument as it deems just.

104 Right to resort to collective job action

(1) Subject to this Act, all employees, workers committees and trade unions shall have the right to resort to collective job action to resolve disputes of interest.

[Subsection as substituted by section 37 of Act 17 of 2002]

(2) Subject to subsection (4), no employees, workers committee, trade union, employer, employers organisation or federation shall resort to collective job action unless—

(a) fourteen days’ written notice of intent to resort to such action, specifying the grounds for the intended action, has been given—

(i) to the party against whom the action is to be taken; and

(ii) to the appropriate employment council; and

(iii) to the appropriate trade union or employers organisation or federation in the case of members of

a trade union or employers organisation or federation partaking in a collective job action where

the trade union or employers organisation or federation is not itself resorting to such action;

and

(b) an attempt has been made to conciliate the dispute and a certificate of no settlement has been issued in terms of section ninety-three.

[Subsection as substituted by section 37 of Act 17 of 2002]

(3) Subject to subsection (4), no collective job action may be recommended or engaged in by—

(a) any employees, workers committee, trade union, employer, employers organisation or federation—

(i) if the persons concerned are engaged in an essential service; or

(ii) if the issue in dispute is a dispute of right; or

(iii) if the parties to the dispute have agreed to refer the dispute to arbitration;

or

(b) any employees, workers committee or employer, if there is in existence a registered trade union or employers organisation which represents the interests of the employees or employers concerned and that

trade union or employers organisation has not approved or authorised the collective job action; or

(c) any trade union, employers organisation or federation unless the trade union, employers organisation or federation is registered; or

(d) any workers committee, if there is in existence a union agreement which provides for or governs the matter in dispute, and such agreement has not been complied with or remedies specified therein have not

been exhausted as to the issue in dispute; or

(e) any workers committee, trade union or employers organisation, except with the agreement of the majority of the employees or employers, as the case may be, voting by secret ballot.

[Subsection as substituted by section 37 of Act 17 of 2002]

(4) Nothing in subsection (1), (2) or (3) shall be deemed to prevent collective job action from being resorted

to—

(a) in order to avoid any occupational hazard which is reasonably feared to pose an immediate threat to the health or safety of the persons concerned:

Provided that—

(i) the occupational hazard has not been deliberately caused by the persons resorting to the

collective job action;

(ii) the collective job action resorted to shall remain proportional in scope and locality to the occupational hazard in question;

(iii) the collective job action shall diminish in proportion as such occupational hazard diminishes;

(b) in defence of an immediate threat to the existence of a workers committee or a registered trade union.

[Paragraph as amended by section 37 of Act 7 of 2005]

104A Picketing

(1) In the section—

“picket” means a gathering of members and supporters of a trade union or workers committee for either or both of the following purposes—

(a) demonstrating peacefully—

(i) in support of any collective job action; or

(ii) in opposition to any lock-out;

and

(b) peacefully persuading other members of the trade union or workers committee or employees of the industry, undertaking or workplace represented by the trade union or workers committee to

take part in the collective job action or demonstration.

(2) A registered trade union or workers committee may authorise a picket.

(3) Notwithstanding any other law regulating the right of assembly, a picket authorised in terms of subsection

(2) may be lawfully conducted—

(a) outside the premises of an employer or in any place to which the public has access; and

(b) if so authorised by a collective bargaining agreement, or a code of picketing agreed between the Minister and the appropriate advisory council, if any, appointed in terms of section

nineteen and prescribed by regulations made in terms of section one hundred and nineteen, inside the premises of the

employer concerned in any area that does not substantially affect production.

[Section as inserted by section 38 of Act 17 of 2002]

105 Lock-outs and actions connected therewith

No employer or employers organization shall—

(a) threaten, recommend or engage in a lock-out, except in accordance with sections one hundred and two and one hundred and four; or (b) without the consent of the Minister, lay off, suspend or dismiss any employee or withhold wages or benefits due to any employee as a consequence of or in connection with a lock-out.

(2) No employer or employers organisation or federation, or official or office-bearer of such employers organisation or federation, shall threaten, recommend, encourage, incite, organise or engage in an unlawful collective job action referred to in paragraph (b) of the definition of that term in section two.

(3) Where more than one person referred to in subsection (2) threatened, recommended, encouraged, incited, organised or engaged in the unlawful collective job action, their liability therefor shall be joint and several.

[Section as substituted by section 39 of Act 17 of 2002]

106 Show cause orders

(1) Whenever a workers committee, trade union, employers organisation or federation of registered trade unions or employers organisations (hereafter in this section called a "responsible person") threatens, recommends,

encourages, incites, organises or engages in any collective action referred to in subsection (1) of section one hundred and nine (hereinafter in this section and section one hundred and seven called an "unlawful collective action"), the Minister, acting on his own initiative or upon the application of any person affected or likely to be affected by the unlawful collective action, may issue an order calling upon the responsible person to show cause why a disposal order should not be made in relation thereto:

Provided that the Minister may call both parties to appear before him or her for submissions before he or she issues a show cause order if he or she deems it necessary that they appear.

[Proviso inserted by section 36 of Act 7 of 2005]

(2) A show cause order—

(a) shall specify—

(i) the date, time and place at which the responsible person must appear before the Labour Court to

show cause why a disposal order should not be made; and

(ii) the order or action desired or proposed;

(b) may direct that pending the issuance of a disposal order, the unlawful collective action concerned be terminated, postponed or suspended.

[Section as substituted by section 40 of Act 17 of 2002]

107 Disposal orders

(1) On the return day of a show cause order the Labour Court shall, at the time and place specified in the order, inquire into the matter and shall afford the parties concerned an opportunity of making representations in the matter.

(2) After conducting an inquiry in terms of subsection (1), the Labour Court may issue a disposal order directing that—

(a) the unlawful collective action be terminated, postponed or suspended; or (b) the issue giving rise to the unlawful collective action concerned be referred to another authority to be dealt with in terms of Part XII and that, pending the determination of the issue in terms of that Part, the unlawful collective action concerned be terminated, postponed or suspended.

(3) Without derogation from the generality of the powers conferred upon the Labour Court in terms of subsection (2) to make a disposal order, such order may provide for—

(a) in the case of an unlawful collective action other than a lock-out—

(i) discharge or suspension of an employer's liability to pay all or part of the wages or benefits due

to specified employees or categories of employees engaged in the unlawful collective action, in

respect of the duration of such collective action or part thereof;

(ii) the employer, to take disciplinary action in terms of the code or law, or lay off or suspend with

or without pay, specified employees or categories of employees engaged in the unlawful

collective action;

[Subparagraph as amended by section 37 of Act 7 of 2005]

(iii) the lay off or suspension, with or without pay, of specified employees or categories of employees not engaged in the unlawful collective action for such period as may be specified where such lay off or suspension is necessitated by the collective action;

(iv) the dismissal of specified employees or categories of employees engaged in the unlawful collective action;

(v) the prohibition of the collection of union dues by any trade union concerned for such period as may be specified;

(vi) the suspension or rescission of the registration of the trade union involved in the collective job action;

(vii) the taking of disciplinary action by the employer in the case of employees on collective job action, in terms of the code or any other sanction as the circumstances permit, in respect of defiance of a show cause order.

[Subparagraph as inserted by section 37 of Act 7 of 2005]

(b) in the case of an unlawful collective action consisting of a lock-out—

(i) where wages or benefits due to employees have been withheld or suspended, the payment of such wages or benefits;

(ii) the resumption of the normal operations of the undertaking concerned;

(iii) where any employees have been laid off, suspended or dismissed, the reinstatement of such employees with all necessary wages, compensation and other related benefits;

(iv) the suspension or dismissal of specified managerial employees who are responsible for or have provoked, or contributed to, the lock-out.

[Section as substituted by section 40 of Act 17 of 2002]

108 Protection of persons engaged in lawful collective action

(1) In this section and section one hundred and nine—

“lawful collective action” means any collective job action that complies with this Part in respect of its notification and other matters provided for under this Part, and “unlawful collective action” shall be construed accordingly.

(2) It shall not be a delict or breach of contract for any workers committee, registered trade union, registered employers organisation or registered federation of registered trade unions or employers organisations (hereinafter

in this section called a “protected person”) to threaten, recommend or engage in a lawful collective action, and no

protected person shall be liable to any civil liability or proceedings therefor other than as specified in this Part:

Provided that such immunity from suit shall not extend to wilful acts or omissions threatening or resulting in the destruction of, or damage to, property other than the perishing of goods caused by employees’ absence from work on account of such collective action.

(3) All individual employees and officials or office-bearers of a protected person, shall be entitled to the

same immunity as is conferred upon a protected person in terms of subsection (2) and, in addition, his

employment shall not be terminated on the ground that he has threatened, recommended or engaged in any lawful

collective action.

(4) An employer is not obliged to remunerate an employee for services that the employee does not render

during the lawful collective action except where the employee’s remuneration includes payment in kind by way of

accommodation, the provision of food and other basic amenities of life, in which event the employer shall not

discontinue such payment in kind unless the employee declines such remuneration:

Provided that, at the conclusion of the collective action, the employer may recover the monetary value of such remuneration by action instituted in the Labour Court.

(5) An employer may not employ any person for the purpose of performing the work of an employee who is locked out.

[Section as substituted by section 40 of Act 17 of 2002]

109 Liability of persons engaged in unlawful collective action

(1) If a workers committee, trade union, employers organisation or federation of registered trade unions or employers organisations (hereinafter in this section called a "responsible person"), or any individual employer or employee or group of individual employers or employees, recommends, advises, encourages, threatens, incites, commands, aids, procures, organises or engages, in any collective action which is prohibited in terms of subsection (3) of section one hundred and four, the responsible person, and every official or office-bearer of the responsible person, or, as the case may be, individual employer or employee or group of individual employers or employees, shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(2) Any person other than a person referred to in subsection (1) who recommends, advises, encourages, threatens, incites, commands, aids or procures any collective action which is prohibited in terms of subsection (3) of section one hundred and four, with the intention or realising that there is a risk or possibility of bringing about such collective action, shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

The test referred to in section 3 of the Public Order and Security Act [Chapter 11:17] shall apply to determining whether or not the person whose conduct is in issue realised that there was a risk or possibility that his conduct might bring about the collective action referred to in this subsection.

(3) The Minister may, by order in writing served on—

(a) a trade union or employers organisation which he believes on reasonable grounds to be in contravention of subsection (1); and

(b) the employment council to which the trade union or employers organisation referred to in paragraph (a) is a party; and

(c) any employer who is party to a collective bargaining agreement with the trade union referred to in paragraph (a);
suspend for such period, not exceeding twelve months, as shall be specified in the order, the right of the trade union to levy, collect or recover union dues by means of a check-off scheme, or the right of the employers organisation to collect membership fees.

(4) An order referred to in subsection (3) may be issued together with, or independently or instead of, a show cause order.

(5) If—

(a) criminal proceedings against a trade union or employers organisation referred to in paragraph (a) of subsection (3)—

(i) are not instituted within thirty days of the date of service of the order referred to in subsection

(3) on the trade union or employers organisation; or

(ii) end otherwise than in conviction;

or

(b) the Labour Court declines to grant a disposal order;

the order shall be deemed to have been cancelled with effect from the last day for the institution of criminal proceedings in terms of paragraph (a), or the date of acquittal or withdrawal of the criminal proceedings, or the date when the Labour Court declined to grant an order referred to in paragraph (b), whichever is the earliest date.

(6) In addition to any penalty that may be imposed under subsection (1) or (2) and without derogation from any other remedy available under any other law—

(a) a responsible person, and every official or office-bearer of the responsible person, and every individual employer or employee who participates in any unlawful collective action; or

(b) a person referred to in subsection (2);

as the case may be, shall be jointly and severally liable, at the suit of any injured party, for any injury to or death of a person, loss of or damage to property or other economic loss, including the perishing of goods caused by employees' absence from work, caused by or arising out of or occurring during such collective action.

(7) Subject to Part XIX of the Criminal Procedure and Evidence Act [Chapter 9:07], a court which has convicted a person of any offence in terms of subsection (1) that involves any loss, damage, injury or death for which that person is liable in terms of this section shall forthwith award compensation to any person who has suffered personal injury or whose right or interest in property of any description has been lost or diminished as a direct result of the offence.

[Section as substituted by section 40 of Act 17 of 2002]

110 Appeals

(1) Any person who is aggrieved by—

(a) a show cause order or the refusal to make such order; or (b) a disposal order made by an appropriate authority or by the refusal of any such authority to make such order;

may appeal to the Labour Court.

(2) The lodging of an appeal in terms of subsection (1) shall not affect any order appealed against:

Provided that pending the determination of the appeal, the Minister or the appropriate authority may give such directions to, or impose such restrictions on, any of the parties as he considers fair and reasonable, taking into account the respective rights of the parties and the public interest.

[Subsection as amended by section 45 of Act 17 of 2002]

111 Cessation of collective job action

Whenever—

(a) the underlying cause of any collective job action or lock-out which is threatened, anticipated or in force has been removed; or

(b) the issue, dispute or complaint giving rise to any collective job action or lock-out which is threatened, anticipated, or in force has been determined or resolved in terms of Part XII or this Part; or

(c) any collective job action by a workers committee or trade union is threatened, anticipated or in force and the executive of such workers committee or trade union or federation thereof, acting in terms of its constitution, has ordered the suspension of such collective job action; or

(d) the termination, postponement or suspension of any collective job action or lock-out is directed in any show cause order or disposal order which has been given;

any person who is or might become involved in such collective job action or lock-out shall, as the case may be, forthwith cease or refrain from participating in or threatening such collective job action or lock-out.

112 Offences under Part XIII

(1) Any person who contravenes or fails to comply with—

(a) subsection (2) or (3) of section one hundred and four; or

(b) section one hundred and five ; or(

c) a direction made in terms of paragraph (b) or (c) of subsection (2) of section one hundred and six; or

(d) the terms of a disposal order; or(

e) section one hundred and eleven;

shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(2) When imposing any penalty or sentence upon conviction for an offence in terms of subsection (1), the court shall take into account—

(a) the terms of any show cause order or disposal order which has been made relating to the offence concerned, and the extent to which the convicted person has complied with it; and

(b) the extent to which the dispute concerned has been resolved.

[Section as substituted by section 4 of Act 22 of 2001]

PART XIV

EMPLOYMENT AGENCIES

113 Interpretation in Part XIV

(1) In this Part, "registrar" means the registrar of employment agencies referred to in section one hundred and twenty-one.

(2) The registrar shall keep a register of employment agencies which have been registered in terms of this Act, and shall perform such other functions as are imposed or conferred upon him under this Act.

(3) The registrar may, subject to the directions of the Minister, delegate any of his functions to any other person employed by the State.

114 Employment agencies to be registered

(1) No person shall—

(a) conduct an employment agency; or (b) charge or recover any payment or reward for or in connection with the procurement of employment through an employment agency;

unless that employment agency is registered under this Act.

(2) No person shall hold himself out as conducting an employment agency, unless that employment agency is registered under this Act.

115 Application for registration, issue, variation and cancellation of certificates of registration

(1) Application for the registration of an employment agency shall be made to the registrar in the prescribed form.

(2) Upon an application made to him in terms of subsection (1), if the registrar—

(a) is satisfied that the premises concerned are suitable for use as an employment agency, and that having regard to any other relevant matters the application should be granted, he shall grant the application and

issue to the applicant a certificate of registration;

(b) is not so satisfied as to the matters specified in paragraph (a), he shall refuse the application and give reasons for his refusal.

(3) A certificate of registration shall specify—

(a) the name of the person to whom the certificate is issued; and

(b) the premises at which the business is to be conducted; and

(c) the period for which the certificate shall be in force; and

(d) the area, including any foreign country, in respect of which the business may be conducted; and

(e) the class or classes of persons or employment in respect of which the business may be conducted; and (f) any conditions subject to which the business may be conducted.

(4) The registrar may cancel the registration of an employment agency or vary the terms or conditions of any

certificate of registration—

(a) after due inquiry and for good cause, if he has notified the holder of the certificate of his intention to do so, and has given the holder the opportunity of making representations to him, and has considered any

representations which the holder has made; or

(b) on the application of the holder of the certificate.

(5) Any person aggrieved by a decision of the registrar made in the exercise of his functions under this

section may appeal against such decision to the Labour Court, which may determine the matter in such manner as

it deems just.

116 Duties of persons conducting employment agencies

(1) Every person who conducts or is in charge of an employment agency registered under this Act shall—

(a) retain any record which by regulations made under this Act he is required to make for a period of three years subsequent to the occurrence of the event recorded; and

(b) on demand by an employment officer made at any reasonable time during the said period of three years, produce the said record for inspection; and

(c) furnish to the registrar such statistical information at such times and in such manner as may be prescribed.

(2) No person shall charge or receive in respect of anything done or to be done at an employment agency—

(a) any fee or other payment or reward at a rate higher than that which may, from time to time, be prescribed for any particular area and class of business; or

(b) any fee or other payment or reward, unless provision has been made for the charging of such fee, payment or reward in regulations made under this Act:

Provided that this subsection shall not apply to a business consultant carrying on business at the same place as an employment agency in respect of anything done in the course of such business other than the procurement of employment for clients.

117 Powers of employment officers

(1) An employment officer may, without previous notice and at any reasonable time during the day, enter

upon any premises of an employment agency for the purpose of conducting any search therein where there are reasonable grounds for believing that such entry or search is necessary for the prevention, investigation or detection of an offence in terms of this Part.

(2) In the exercise of the powers conferred upon him by subsection (1) an employment officer may—

(a) require from any person conducting an employment agency the production of any books or documents which relate to his business and which are or have been upon the premises or in his possession or

custody, or under his control; and

(b) at any place require from any person who has the possession or custody or control of any books or documents relating to the business of any person who is or was conducting an employment agency, the

production of such books or documents; and

(c) examine and make extracts from, and copies of, any books or documents referred to in paragraph (a) or (b); and

(d) require an explanation of any entry in any books or documents referred to in paragraph (a) or (b); and (e) seize any book or document referred to in paragraph (a) or (b) that, in his opinion, may afford evidence of the commission of any offence under this Act:

Provided that in the exercise of the powers conferred by this subsection, an employment officer shall exercise such reasonable care as to ensure that the smooth and efficient running of an employment agency is not unduly interfered with.

(3) Every employer in connection with whose employment agency any premises are occupied or used, and every person employed by him, shall at all reasonable times during the day, furnish such reasonable facilities as may be required by an employment officer for entering the premises for the purpose of inspecting or examining the books and documents kept in the premises, or for making any inquiry in relation thereto.

(4) No person shall—

(a) make a false statement—

(i) in any representations to an employment officer; or

(ii) when giving evidence to or before an employment officer investigating a case in terms of this

section;

which he knows to be false in any material particular, or which he has no reason to believe to be true; or

(b) refuse to answer any question which an employment officer, in the exercise of his functions in terms of this section, has put to him; or

(c) refuse to comply to the best of his ability with any requirement made by an employment officer in the exercise of his functions in terms of this section; or

(d) hinder an employment officer in the exercise of his functions in terms of this section.

118 Offences under Part XIV

(1) Any person who fails to comply with—

(a) subsection (1) or (2) of section one hundred and fourteen; or

(b) any condition in a certificate of registration specified pursuant to paragraph (f) of subsection (3) of section

one hundred and fifteen;

shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(2) Any person who contravenes—

(a) subsection (1) or (2) of section one hundred and sixteen; or

(b) subsection (4) of section one hundred and seventeen; or

(c) any regulations made in terms of section one hundred and nineteen;

shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection as substituted by section 4 of Act 22 of 2001]

119 Minister may make regulations

(1) The Minister may make such regulations as he deems necessary or expedient for the purpose of giving effect to, or for the better administration of, this Part.

(2) Regulations made in terms of subsection (1) may provide for—

(a) the form in which an application is to be made for a certificate of registration;

(b) the fee to be paid for a certificate of registration or copies thereof;

c) the fees which may be charged in respect of the business of an employment agency;(d) the surrender of certificates of registration where the conditions thereof are to be varied or where such certificates are to be cancelled;

(e) the records to be kept in respect of an employment agency.

PART XV

GENERAL

120 Investigation of trade unions and employers organizations

(1) If the Minister has reasonable cause to believe that the property or funds of any trade union, employers organization or federation are being misappropriated or misapplied, or that the affairs of any trade union, employers organization or federation are being conducted in a manner that is detrimental to the interests of its members as a whole, the Minister may order that such trade union, employers organization or federation be investigated.

(2) For the purpose of any investigation referred to in subsection (1), the Minister shall appoint in writing an investigator who shall, at all reasonable times and without prior notice, have power—

(a) to enter any premises; and

(b) to question any person employed on the premises; and

c) to inspect and make copies of and take extracts from any books, records or other documents on the premises;

connected with or related to the trade union, employers organization or federation under investigation.

(3) An investigator appointed in terms of subsection (2) shall report the results of his investigation to the Minister as soon as practicable and, in so doing, may recommend, having regard to all the circumstances of the case, that—

(a) in the case of an unregistered trade union, employers organization, or federation such trade union or employers organization or federation be wound up; or

(b) in the case of a registered trade union, employers organization or registered federation such trade union, employers organization or federation—

(i) be de-registered and wound up; or

(ii) be administered in terms of subsection (7).

(4) During the period of investigation of a trade union, employers organization or federation no person who is or has been an office-bearer of the trade union, employers organization or federation concerned shall, without the consent of the investigator, in any way expend or dispose of any property of the trade union, employers organization or federation concerned.

(5) An investigator shall not refuse to grant consent in terms of subsection (4) in respect of any expenditure or disposal which is in the ordinary and lawful course of business of the trade union, or employers organization or federation concerned.

(6) Where the Minister accepts a recommendation made in terms of paragraph (a) or subparagraph (i) of paragraph (b) of subsection (3), he shall—

a) in the case of an unregistered trade union, employers organization or federation make application to the High Court; or

(b) in the case of a registered trade union, employers organization or federation make application to the Labour Court;

for the trade union, employers organization or federation concerned to be wound up in terms of its constitution.

(7) Where the Minister accepts a recommendation made in terms of subparagraph (ii) of paragraph (b) of subsection (3), he shall make application to the Labour Court to appoint an administrator and such assistants as the administrator may require, to administer the affairs of the trade union, employers organization or federation in

respect of which the recommendation was made:

Provided that an administrator may not be appointed for more than six months or until the next annual general meeting of the trade union, employers organization or federation concerned whichever is the later.

(8) An administrator appointed in terms of subsection (7) shall administer the affairs of the trade union, employers organization or federation concerned in such a manner as to rectify the matters for the rectification of

which he was appointed and, in so doing, may make an order—

(a) prohibiting any person who is or has been an office-bearer of the trade union, employers organization or federation concerned from—

(i) expending, disposing of or in any way dealing with any property of the trade union, employers organization or federation concerned; or

(ii) operating any account with any bank, building society or other financial institution on behalf of the trade union, employers organization or federation concerned:

Provided that the administrator shall authorize any transaction or expenditure which he is satisfied forms part of the ordinary and lawful course of business of the trade union, employers organization or federation concerned;

(b) directing any person who is or has been an office-bearer of the trade union, employers organization or federation concerned to refund or return to such trade union, or employers organization or federation any property which he has misappropriated from such trade union, employers organization or federation.

(9) The administrator shall submit for registration any order made in terms of subsection (8) to whichever court would have had jurisdiction to make such an order had the matter been determined by it.

(10) Where an order has been registered in terms of subsection (9), it shall have the effect, for purposes of enforcement, of a civil judgment of the appropriate court.

(11) Any person who—

(a) makes any false representation to, or otherwise hinders or obstructs, an investigator or administrator in the performance of his functions under this section; or

(b) contravenes subsection (4);
shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act 22 of 2001]

121 Officials

(1) For the purposes of this Act, there shall be—

(a) a Registrar of Labour and such number of Assistant Registrars of Labour as may be necessary for carrying out the functions assigned to such officers in terms of this Act; and

(b) such number of labour officers and employment officers as may be necessary for carrying out the functions assigned to such officers in terms of this Act;

whose offices shall form part of the Public Service.

(2) With the approval of the Minister, the Registrar may delegate to any other officer referred to in subsection (1) any of the functions conferred upon him by this Act, other than such power of delegation.

(3) The Minister may give directions of a general nature to any officer referred to in subsection (1) as to the performance of his functions in terms of this Act.

(4) An officer referred to in subsection (1) shall be issued with a certificate signed by the Registrar stating his official title.

[Section as substituted by section 41 of Act 17 of 2002]

122 Acquisition of undertakings by trade unions and trade union congress

(1) Whenever—

(a) an undertaking which employs persons who are members of one or more registered trade unions or a federation thereof is to be discontinued; and

(b) it would be in the interests of consumers, the employees concerned and members of the public generally that the undertaking be continued;

the Minister may, subject to this section, direct all or any of the trade unions or the federation concerned to endeavour in good faith to acquire the undertaking from their funds.

(2) Where the employees of an undertaking referred to in subsection (1) are not members of a registered trade union, the Minister may, if it would be in the interests of consumers, the employees concerned and members of the public generally that the undertaking be continued, subject to this section, direct any federation, association or

congress of trade unions to endeavour in good faith to acquire the undertaking from the funds of such association

or congress.

(3) Before making any direction in terms of subsection (1) or (2), the Minister shall consult the employees and any trade union, federation, association or congress of trade unions concerned.

(4) When making any direction in terms of subsection (1) or (2), the Minister shall include therein such directions as to the repayment by the employees concerned of such of the costs and expenses of the federation, association or congress of trade unions concerned as the Minister thinks fit.

123 Minister may raise levies to meet certain expenses

(1) Subject to subsection (2), the Minister may, after consultation with the Minister responsible for finance, by statutory instrument provide for the imposition and payment of levies on employees, employers organizations, trade unions and federations thereof for the purpose of meeting the expenses of all or any of the following—

(a)

[Paragraph repealed by section 45 of Act 17 of 2002]

(b) the Labour Court; and (c) employers organizations or any federation, association or congress of trade unions recognized by the Minister as being representative of all or most registered trade unions; and

(d) employers organizations recognized by the Minister as being representative of all or most registered employer organizations.

(2) In imposing levies in terms of subsection (1), the Minister shall take into account—

(a) the extent to which any person upon whom the levy is imposed has utilized or ought to utilize the services of the Labour Court, federation, association or congress of trade unions concerned; and

[Paragraph as amended by section 45 of Act 17 of 2002]

(b) the ability of any person or organization upon whom the levy is imposed to pay the levy.

124 Protection against multiple proceedings

(1) Where any proceedings in respect of any matter have been instituted, completed or determined in terms of this Act, no person who is aware thereof shall institute or cause to be instituted, or shall continue any other proceedings, in respect of the same or any related matter, without first advising the authority, court or tribunal

which is responsible for or concerned with the second-mentioned proceedings of the fact of the earlier proceedings.

(2)

[Subsection repealed by section 4 of Act 22 of 2001]

125 Records to be kept by employers, principals and contractors

(1) Every employer upon whom any agreement, determination or regulation is binding under this Act in relation to remuneration to be paid, time to be worked or such other particulars as may be prescribed shall at all times keep, in respect of all persons employed by him, records of the remuneration paid, of the time worked and of those other particulars.

(2) The form and manner in which the records referred to in subsection (1) shall be kept as prescribed:

Provided that the Registrar may in writing authorize the keeping of such records in some other form if the records so kept will, in his opinion, enable a labour officer or designated agent to ascertain therefrom the required particulars.

(3) Whenever any agreement, determination or regulation regulates the rates at which or the principles upon which payment shall be made by a principal or contractor to any person to whom any work is given out on contract by that principal or contractor, every such principal or contractor shall at all times keep records of payments made by him to any person to whom he has so given out work on contract and of such other particulars

as may be prescribed, and every such person to whom work has so been given out on contract shall at all times keep records of payments received by him from any such principal or contractor in respect of such work and such other particulars as may be prescribed.

(4) Every person who is or has been an employer or principal or contractor, as the case may be, shall retain the records referred to in subsections (1) and (3) for a period of three years and shall produce these records on

demand made at any time during that period by—

(a) a labour officer; or (b) a designated agent acting within the scope of his authority, in terms of subsection (3) of section sixtythree.

(5) If an employer fails to keep or retain the records referred to in this section or falsifies any such record, it shall be presumed for the purposes of this Act that every employee employed by him during the relevant period was engaged throughout that period for not less than the ordinary hours of work applicable to that employee in terms of any agreement, determination or regulation under this Act.

(6) Where it is proved that any statement or entry contained in any record is false, the person required in terms of this section to keep that record shall be presumed, until the contrary is proved, wilfully to have falsified that record.

(7) Any person who fails to comply with any of the provisions of this section applicable to him or who wilfully falsifies any record referred to in this section shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act 22 of 2001]

126 Investigative powers of labour officers

(1) A labour officer—

(a) may without previous notice enter upon any premises in which any person is being employed; and (b) in respect of matters relating to wages, hours or conditions of work, may question, either apart from or in the presence of others, any person who is or has been upon or in any premises in which any person is being employed; and

(c) may require from any person who is or has been upon or in any premises in which any person is being employed the production then and there, or at a time and place fixed by the labour officer, of all relevant books and documents which are or have been upon or in the premises or in the possession or custody or under the control of any employer by whom the premises are occupied or used, or of any employee of that employer; and

(d) may at any time and at any place require from any person who has the possession or custody or control of any relevant book or document relating to the business of any person who is or was an employer, the

production then and there, or at a time and place fixed by the labour officer, of that book or document;

and

(e) may examine and make extracts from and copies of all books and documents produced to or examined by him, and may require an explanation of any entries in any such books or documents; and

(f) may seize any such books or documents as he believes on reasonable grounds may afford evidence of any offence under this Act.

(2) Any employer in connection with whose business any premises are occupied or used, and every person employed by him, shall at all times furnish such facilities as are required by a labour officer for the purpose of exercising any of the powers conferred by subsection (1).

(3) Where any work is given out on contract to any person by a principal or contractor who is himself an employer in or is engaged in the undertaking, industry, trade or occupation concerned, a labour officer may exercise in relation to that principal or contractor any or all of the powers conferred by subsection (1).

(4) Any labour officer exercising a power or performing a duty conferred or imposed upon him by this section shall on demand produce the certificate furnished to him in terms of subsection (3) of section one hundred and twenty-one.

(5) Any person who—

(a) refuses or fails to answer any question which a labour officer in the exercise of his functions puts to him; or

(b) makes a false statement—

(i) in any representations to a labour officer; or

(ii) when giving evidence to or before a labour officer investigating a case in terms of this Part:

which he knows to be false in any material particular, or which he has no reason to believe to be true; or

(c) refuses or fails to comply with any request made by a labour officer in the exercise of his functions; or (d) hinders a labour officer in the exercise of his functions;

shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not

exceeding six months or to both such fine and such imprisonment.

[Subsection as substituted by section 40 of Act 17 of 2002]

127 Regulations

(1) The Minister may make regulations prescribing anything which, in terms of this Act, is to be prescribed or which in his opinion, is necessary or convenient to be prescribed, for carrying out or giving effect to this Act.

(2) Regulations made in terms of subsection (1) may provide for—

(a) the form of applications, notices or orders in terms of this Act;(b) the procedures to be followed in making applications or appeals and the procedures to be followed by any official, board, tribunal or authority upon which functions are conferred in terms of this Act;

(c) the examination and inspection of the books, records and documents of workers committees, trade unions and employers organizations;

(d) the requirement by workers committees, trade unions and employers organizations to submit returns concerning their affairs to the Minister or such officials as may be specified;

(e) the duties and functions of officers in terms of this Act;(

f) the fees payable in respect of the registration and variation of registration of a trade union or employers organisation or federation thereof and the registration of employment councils.

[Paragraph as inserted by section 43 of Act 17 of 2002]

(3) Regulations made in terms of subsection (1) may provide penalties for any contravention thereof:

Provided that no such penalty shall exceed a fine of level five or imprisonment for a period of six months or both such fine and such imprisonment.

[Subsection as amended by section 4 of Act 22 of 2001]

128 Offences by and in respect of labour officers, designated agents and officials

(1) Any person who—

(a)

[Paragraph repealed by section 4 of Act 22 of 2001]

(b) falsely holds himself out to be—

(i) a labour officer; or

(ii) a designated agent of an employment council; or

(iii) an official of a trade union or employers organization;

or

(c) being an officer, agent or official referred to in paragraph (b), falsely represents that he is authorized by the Minister, an employment council or a trade union or employers organization to collect any moneys

when he is not so authorized;

shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not

exceeding one year or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act 22 of 2001]

(2)

[Subsection repealed by section 4 of Act 22 of 2001]